

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 374, 375, 378 & 381 TO 383 OF 2008

D.Paulkripakaran .. Appellant in Crl. A. 374/08
S.Kunjithapatham .. Appellant in Crl. A. 375/08
K.Thangamani .. Appellant in Crl. A. 378/08
N.Rajagopalan .. Appellant in Crl. A. 381/08
A.Selvaraj .. Appellant in Crl. A. 382/08

1. A.Shanmugam
2. P.Srinivasan
3. S.Visvanathan .. Appellants in Crl. A. 383/08

- Vs -

Inspector of Police
SPE/CBI/ACB/Chennai
R.C.Nos.10(A)/89 17(A)/89
18(A)/89 & 19(A)/89 of
SPE/CBI/ACB/chennaiRespondent in Crl.A.No.374/2008
Crl.A.No.375/2008)
378/2008,381/2008 to 383/2008

Criminal Appeals filed u/s 374 (2) of the Code of Criminal Procedure r/w Section 27 of the Prevention of Corruption Act, against the conviction and sentence dated 08.05.2008 on the file of the II Additional District Judge, Special Court for CBI Cases, Coimbatore, in C.C. No.8 of 1998.

For Appellants : Mr.ShanmugaSundaram Senior Counsel
for
Mr. M.Guruprasad in CA 374/08
Mr. T.S.V.Krishnan in CA 375 & 378/08
Mr.K.R.Shankar in C.A. 381/08
Mr. C.D.Johnson in CA 382/08
Mr. D.J.Venkatesan in CA 383/08

For Respondent : Mr. K.Srinivasan, Spl. PP (CBI Cases)

COMMON JUDGMENT

Is the famous saying 'the fence eating the crops' a mere myth or has it withstood the test of time to be a gospel truth is the outcome of the sum and substance of the case projected before this Court by the prosecution.

2. Time immemorial, even during the rule of the great Indian monarchs of the Chera, Chola and Pandiya Dynasties, taxation was prevalent in different forms. The most comprehensive and successful taxation system was formulated almost two thousand years ago by Kautilya Chanakya, the King Maker, who was the backbone of the golden rule under Chandragupta Maurya, who believed that the State must promote economic welfare and fully regulate economic activities. "Kosha Moolo Danda", meaning that "Revenue is the backbone of Administration" has been the postulate by Chanakya in the first chapter in Arthasashtra. The primary purpose of taxation is to raise revenue to meet huge administrative expenditure in discharging public duties. Taxation is used as an instrument of economic policy, and the important objective is for the economic development of the country. Capital formation is the kingpin of economic development. While on the one hand tax evasion is one of the virus eating on the economic growth of the country, on the other hand, siphoning off the amount by way of raising fraudulent claims for refund is eating on the other side of the economic growth. Taxation is the most important source of income for the State/country, which is why revenue collection officials must be honest, dedicated and professional. Negligence of duty, ignorance, corruption, arrogance, greed and non-professional attitude are the main reasons behind loss of revenue. The fence, being the officials of the tax collection arm of the Governmental machinery, are ordained with the task of preventing the crops, viz., the growth of the country, from being razed/grazed, at the hands of such unscrupulous social evils.

3. The appellants, who were arrayed as A-1 to A-8, were tried before the learned II Addl. District Judge, Special Court for CBI Cases, Coimbatore, in C.C. No.8/1998 under the various provisions of the Indian Penal Code as also under the provisions of the Prevention of Corruption Act and after trial, the trial

court, found the accused/appellants guilty and, accordingly convicted and sentenced them as under :-

Accused	Section	Sentence
A-1 to A-8	120-B r/w 419, 420, 467, 467 r/w 471, 468, 468 r/w 471 IPC and Sec. 5 (2) r/w 5 (1) (d) of PC Act, 1947 and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988	Convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each, in default to undergo simple imprisonment for a period of six months.
A-1	419 (18 counts), 420 (62 counts), 467 (65 counts), 467 r/w 471 (65 counts), 468 (64 counts) and 468 r/w 471 IPC (64 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo rigorous imprisonment for a period of one week. (For each of the count)
A-2	5 (2) r/w 5 (1) (d) of PC Act, 1947 (51 counts) and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988 (10 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo rigorous imprisonment for a period of one week. (For each of the count)

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A-3	5 (2) r/w 5 (1) (d) of PC Act, 1947 (48 counts) and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988 (10 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo rigorous imprisonment for a period of one week. (For each of the count)
A-4	5 (2) r/w 5 (1) (d) of PC Act, 1947 (4 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo rigorous imprisonment for a period of one month. (For each of the count)
A-5	419, 420 (4 counts), 467 (11 counts), 467 r/w 471 (11 counts), 468 (2 counts) and 468 r/w 471 IPC (2 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo rigorous imprisonment for a period of one month. (For each of the count)
A-6	420 (3 counts), 467 (3 counts) & 467 r/w 471 IPC (3 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo rigorous imprisonment for a period of one month. (For each of the count)

A-7	419, 420 (2 counts), 467 (5 counts) & 467 r/w 471 IPC (5 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of one month under each count to pay a fine of Rs.1000/- under each count, in default to undergo rigorous imprisonment for a period of one month. (For each of the count)
A-8	419, 420 (3 counts), 467 (3 counts), 467 r/w 471 IPC (3 counts), 468 (3 counts) & 468 r/w 471 (3 counts)	Convicted and sentenced to undergo rigorous imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo rigorous imprisonment for a period of one month. (For each of the count)

The sentences were directed to run concurrently. Aggrieved by the said conviction and sentence, the present appeals have been preferred by the appellants herein, questioning the sustainability of the said conviction and sentence. For the sake of convenience, the appellants herein, who are the accused will be referred to as A-1 to A-8 as arrayed before the trial court.

4. The case of the prosecution unfolds through a complex array of facts. Conspiracy was hatched between A-1 to A-8 along with the accused turned approvers, P.W.s 1 and 2 to defraud the exchequer, more especially, the income tax department through the submission of fraudulent refund claims on the basis of forged income tax returns accompanied by forged TDS certificates in the names of fictitious persons as also other persons, who are the accused in this case; that forged TDS certificates were prepared by A-1 and the bogus income tax returns were prepared by P.W.s 1 and 2, at the instance of A-1, which were submitted with the income tax department covering a period of three years, viz., 1985-1986, 1986-1987 and 1987-1988; that the said refund claims were processed and approved by A-2, the income tax officer, who sanctioned the refund orders on the basis of the forged documents and the cheques were dispatched to fictitious addresses by A-3 and A-4, who were Lower Division Clerks working in the Income Tax Department; that the issued refund orders were received, which were deposited in the accounts opened in the names of A-5 to A-8 and other fictitious persons. The criminal

conspiracy was hatched for the purpose of reaping pecuniary advantage for A-1 to A-8 as also P.W.s 1 and 2 and in pursuance of the said criminal conspiracy, the fraudulent claims were processed, refund orders were issued and encashed through the accounts opened in the names of A-5 to A-8 as also other fictitious persons, to the tune of Rs.19,25,155/-, thereby causing wrongful loss to the department and wrongful gain to A-1 to A-8 as also P.W.s 1 and 2.

5. Based on reliable information, investigation was undertaken with regard to the submission of income tax returns and process of refund claims by the respondent/CBI and during the course of investigation, P.W.s 1 and 2 were initially taken into custody as accused, who, later, turned as approvers and gave confession statements, which was recorded u/s 164 Cr.P.C., by the Judicial Magistrate No.IV, Coimbatore on 15.2.91 and 7.12.94, which led to the criminal machinery being set in motion by filing of charge sheet against the appellants herein.

6. On the filing of the charge sheet against the appellants herein, the trial court, after furnishing the relied upon documents u/s 207 Cr.P.C. to the accused/appellants, framed, in all, a whooping 422 charges against the accused for the offences under the various provisions of the Indian Penal Code as also under the Prevention of Corruption Act, 1947 and Prevention of Corruption Act, 1988. When questioned, the accused pleaded not guilty.

7. To prove the case, the prosecution examined P.W.s 1 to 63 and marked Exs.P-1 to P-1353. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. On the side of the accused, D.W.s 1 to 3 were examined and Exs.D-1 to D-8 were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, convicted and sentenced the appellants/A-1 to A-8 as noted above. Aggrieved by the said conviction and sentence, the appellants herein, who are A-1 to A-8 before the trial court, preferred the present appeals.

8. During the course of hearing, which spanned several days, on the penultimate day of hearing, this Court was informed that A-4, who is the appellant in Crl. A. No.374/08 died on 15.2.2020 and a memo to this effect has been filed by the learned counsel. In such circumstances, recording the said memo, the appeal as against the appellant in Crl. A. No.374/08 stands abated. The said memo shall form part of the records.

9. Assailing the judgment in and by which the appellants herein stand convicted and sentenced above, learned counsel appearing for the respective appellants advanced their detailed and vociferous arguments at length before this Court on various days.

ARGUMENTS ON BEHALF OF APPELLANTS IN CRL. A. NOS. 375 & 378/2008

10. Learned counsel appearing for the appellants in Crl. A. Nos. 375 and 378, viz., the Income Tax Practitioner and Lower Division Clerks at the Income Tax Department, at the outset, vehemently submitted that the conviction recorded by the trial court, on the materials placed by the prosecution is wholly unsustainable. It is the submission of the learned counsel that the deposition of the prosecution witnesses, coupled with the documentary evidence, bristles with very many infirmities and inconsistencies and, no reliance can be placed on the same to record a conviction.

11. It is the submission of the learned counsel that though for the earlier period, similar assessments were filed, which have been processed by the Income Tax Officers therein, viz., one Raveendranath and Thundiyan and though investigation was also taken up against them, but later the said investigation was dropped. However, curiously, the present set of assessments alone have been targeted, which shows clandestine motive on the part of the prosecution against the appellants herein.

12. It is the pivotal contention of the learned counsel for the appellants that the meeting of minds to bring home a charge u/s 120 (B) IPC has not been proved and in the absence of the prosecution proving the same, the whole gamut of the prosecution case is bound to fail. It is the submission of the learned counsel for the appellants that nowhere, the meeting of minds of the appellants have been proved by the prosecution. In the absence of proving the charge u/s 120 (B) IPC, the other charges does not have a leg to stand by itself.

13. It is the further contention of the learned counsel for the appellants that A-1 is not a registered auditor/income tax practitioner and in the absence of registration as a registered Income Tax Practitioner, as approved by the Commissioner of Income Tax, A-1 could not file any return as an auditor and in the absence of the respondent to prove that A-1 was an auditor, the prosecution case that the whole scheme was engineered by A-1 does not stand the test of legal scrutiny.

14. It is the further submission of the learned counsel that the departmental records, which were in the custody of the prosecution, and which favoured the appellants/accused, have not been made accessible to the appellants and the appellants being denied access to the same, much prejudice has been caused to the appellants as they were not able to project their case effectively.

15. It is the further contention of the learned counsel for the appellants that the proceedings of pardon granted to the approvers, viz., P.W.s 1 and 2, have not been provided to the appellants, thereby, preventing the appellants to effectively represent their side of the case.

16. It is the submission of the learned counsel for the appellants that though the prosecution has projected the case that the assessments claiming refund were filed in the name of non-existing persons, however, the materials available on record reveal that the Commissioner of Income Tax has directed A-2 to levy fine, which, on levy, has been paid by the concerned assessee, which clearly shows that the case of the prosecution that the assessments were filed claiming refund in the name of non-existing persons has no legs to stand.

17. It is the submission of the learned counsel for the appellants that P.W.s 1 and 2, who were also contributors to the alleged crime, for reasons known to the prosecution, turned approvers. However, the Magistrate, who granted pardon has not been examined and the failure to examine the Magistrate is detrimental to the defence and, thereby, fatal to the prosecution, as the defence has been precluded from examining the Magistrates, who granted pardon.

18. It is the further submission of the learned counsel for the appellants that though conviction can be based on the evidence of the approvers, however, the evidence of such approvers must receive corroboration from other evidence and in the absence of necessary corroboration, basing the conviction on the evidence of the approvers alone is not akin to criminal jurisprudence, as it is all likely that the approvers, to save their skin, will definitely favour the prosecution with interested testimony. In the case on hand, the evidence of the approvers have not been corroborated in a manner known to law and in the absence of the same, the trial court, relying on their evidence to convict the appellants, is per se, unsustainable.

19. It is the further submission of the learned counsel for the appellants that P.W.s 1 and 2 have admitted that they have filed all the income tax returns and that only in the TDS, A-1 is alleged to have signed. However, there is no corroboration forthcoming on this aspect. The case of the prosecution is that P.W.60 has corroborated the statement of P.W.s 1 and 2, which is not the necessary ingredient of corroboration as is required under the criminal jurisprudence. It is the evidence of P.W.60 that needs to be corroborated through independent evidence, which in turn corroborates the evidence of P.W.s 1 and 2 and in the absence of such corroboration, placing reliance on the same is wholly unjustified.

20. It is the further submission of the learned counsel for the appellants that specimen signatures were obtained not before the court, but prior to filing of the charge sheet, which is impermissible in law. It is the submission of the learned counsel that expert opinion with regard to handwriting is a very weak piece of evidence and unless it is corroborated by independent witnesses, placing reliance on the same to record a conviction is unsustainable in law.

21. It is the further submission of the learned counsel that the employer-employee relationship between A-1 and P.W.s 1 and 2 have not been proved. In the absence of the relationship being proved, the theory of conspiracy between A-1 and P.W.s 1 and 2 projected by the prosecution is a fabric woven on a non-existent cloth and, therefore, the same is wholly unsustainable.

22. It is the further submission of the learned counsel that all the returns relate to individual returns, which are summary assessments filed u/s 143 (1) of the Income Tax Act and it is seen that the same has not been prepared by A-1, as evidenced from the requisite column, where the seal supposed to be is conspicuously absent. Further it is the submission of the learned counsel that A-1 is not an income tax practitioner, as is projected by the prosecution. Such being the case, mere implication that the said returns were prepared at the office of A-1 by P.W.s 1 and 2 and filed at the behest of A-1 are not borne out by records and fall short for rendering a conviction.

23. It is the further submission of the learned counsel that though P.W.s 1 and 2 have stated that gratification was given to A-2 in the form of payments as also arranging of vehicles, however, no proof to substantiate the payment of such amounts have been filed by the prosecution. Merely stating that payments were given, would not suffice to lead this Court to the conclusion that A-2, as a conspirator in the crime, had received

amounts from A-1 for the alleged refund orders passed by him to the pecuniary advantage of A-1. Proof is a necessary concomitant in corruption cases and passing references and presumptions would not suffice to fasten the crime on the accused.

24. It is the further submission of the learned counsel for the appellants that the original signatures of the officials of the Public Works Department, who had issued the TDS, were not placed before P.W.60, the handwriting expert, for comparison and in the absence of the original signature, comparison with other signatures of the said officials is per se inadmissible and cannot be relied upon to test the veracity of the comparison. Similarly, the original seals have not been placed before the expert, though it is the contention of the prosecution that the seals were prepared by the uncle of P.W.1. The uncle of P.W.1 having not been examined and there being no corroboration to that part of the evidence of P.W.1 relating to the seals and, therefore, placing reliance of the evidence of P.W.1 would be wholly unsustainable.

25. It is the further contention of the learned counsel for the appellants that the signature of one Srinivasan, who was Accounts Officer at Mettur Hydro Project has been stated to be forged and in this regard P.W.49, an employee of the said concern had been examined. It is not the case of the prosecution that the said Srinivasan is no more, and in such a scenario, non-examination of the said Srinivasan is fatal to the case of the prosecution. Examining P.W.49 to prove that the signature is not that of the said Srinivasan is unknown to criminal law, more so, when the register containing the admitted signature of Srinivasan has not been shown to P.W.49, while he was examined by the investigating officer, P.W.62.

26. It is the submission of the learned counsel for the appellants that similar assessments in respect of the very same persons for the previous assessment years, which were passed for refund by certain other income tax officers, though were initially investigated leading to the filing of FIR In RC Nos.17, 18 and 19/89, however, curiously, they were dropped, but only the FIR in respect of the present assessment was carried forward. It is the contention of the appellants that when the FIR in respect of the preceding years were dropped, the only inference that could be arrived at from the same is that the assessments were found to be genuine and, therefore, refund orders were passed. That being the case, when such assessments were found to be genuine in the previous years, there is no material whatsoever to distinguish the present assessments from

the previous assessments and therefore, the prosecution for the present set of assessments alone is impermissible as the present assessment is an off-shoot of the previous assessments, which were stamped to be genuine.

27. It is the composite submission of the learned counsel for the appellants that the assessments filed by the various assessees, though according to the prosecution, are non-existent assessees, however, the same stands belied by Ex.D-1 and D-2, which proves that the assessees are not non-existent or fictitious, which strikes at the very root of the prosecution case.

28. It is the submission of the learned counsel for the appellants that the procedure for sending the income tax refunds is only through Registered Post Acknowledgment Due (for short 'RPAD'), which would be sent to the address, as found in the return. However, the prosecution has not placed before the court any material to prove that the refund orders were not sent by RPAD. In this regard, a register is maintained at the office of the Income Tax Department and if the prosecution case is to be accepted, the register ought to have been placed before the Court to prove that the correspondences were not sent by way of RPAD, but by other means to some other addresses, not found in the returns. The refund orders supposed to be sent by RPAD and the prosecution having not established that the refund orders were not sent by RPAD, fastening the culpability of the crime on A-3 and A-4, who were mere despatching clerks cannot be allowed to stand and the failure of the prosecution to prove the said fact should enure to the benefit of the appellants.

29. It is the contention of the learned counsel for the appellants that though P.W.s 1 and 2 have deposed that a sum of Rs.5,000/- to Rs.10,000/- would be given to A-2 for the purpose of passing the refund orders, however, the said deposition smacks of mala fides for the simple reason that many of the refund orders, the amount of refund was Rs.1,000/- and below. That being the case, prudent warrants that no person would be paying a sum of Rs.5,000/- to Rs.10,000/- for getting a refund of Rs.1,000/- or less, which only goes to show that the case projected by the prosecution is for vindictive purpose and not supported by materials.

30. It is the further contention of the learned counsel for the appellants that A-3 and A-4 are Lower Division Clerks in the Income Tax Department and their work is merely to despatch the refund orders to the addresses mentioned in the refund order, which they have carried out and, therefore, carrying out their

work cannot be put against them by fastening the crime on them. It is further submitted by the learned counsel for the appellants that in fact A-4 was only fulfilling the leave vacancy caused due to the unavailability of A-3 and, therefore, implicating A-4 u/s 120 (B) IPC is not only fallacious, but the ingredients of Section 120 (B) IPC have not been established in a manner known to law and, therefore, the case projected by the prosecution deserves to fail.

31. It is the further submission of the learned counsel for the appellants that had the prosecution case really been true, the whole conspiracy could not have been achieved without the assistance of the employees of the postal department. However, none of the employees of the postal department having been implicated by the prosecution, the case of the prosecution falls much short of establishing the conspiracy angle.

32. In fine, it is the submission of the learned counsel for the appellants/A-1, A-3 and A-4 that the approvers evidence not having been corroborated in a manner known to law and the fact that the specimen signature not having been obtained in open court and the TDS certificates and seals not having been compared and the postman, who is said to have delivered the refund orders, having not been examined and the delivery note and visitors book not having been produced to show that P.W.s 1 and 2 had entered the office of A-2 coupled with the fact that the bank accounts of P.W.s 1 and 2 having not been placed before the Court to show that the money through the alleged fraudulent refunds not entirely having gone to the pocket of P.W.s 1 and 2 and in the absence of any recovery from A-1 with regard to any incriminating materials that were utilised in the filing of the bogus returns, the case of the prosecution not only bristles with many inconsistencies and infirmities, but also falls short of evidence, which is a mathematical necessity in cases under the criminal law and, therefore, the benefit of the lacunae in the prosecution evidence should flow to the appellants and, therefore, they are entitled for an acquittal at the hands of this court.

ARGUMENTS ON BEHALF OF THE APPELLANT/A-2 IN CRL. A. NO.381/2008

33. It is the first and foremost contention of the learned counsel that a pick and choose attitude has been adopted by the prosecution in proceeding only as against A-2, who was an income tax officer, having risen from the lower most ranks in the income tax department, but leaving the other similarly placed persons, against whom also cases were initially registered, but later dropped, for reasons best known to the prosecution, only goes to show that the assessments, which were approved and

refund orders processed by the said officers, which has been followed by A-2 subsequently, only goes to show that the act of A-2 was not isolated, but in continuance of the refunds granted by the preceding officers and in the absence of proceeding against them, proceeding against A-2 alone is impermissible and unsustainable.

34. It is the submission of the learned counsel that the essential ingredient of meeting of minds between the various conspirators in the crime is a necessary concomitant for establishing a charge u/s 120 (B) IPC and in the absence of establishing the same, the whole prosecution case would blow itself into smithereens. It is the submission of the learned counsel that the prosecution neither has shown the meeting of the conspirators in the crime, nor the meeting of minds of the conspirators in the crime, through credible oral or documentary evidence and, therefore, the prosecution has miserably failed to prove the said charge and in the absence of the same, the other charges would stand uncorrelated and the prosecution case stands uncorroborated.

35. It is the further submission of the learned counsel that for the charge under the Prevention of Corruption Act to succeed, necessarily there should be proof of demand and acceptance of the amount. The materials available on record neither proves demand nor acceptance of any amount and merely relying on the uncorroborated testimonies of P.W.s 1 and 2, viz., the approvers, for acceptance of the amount would not be suffice to hold that the necessities for the charge under the Prevention of Corruption Act have been established.

36. It is the submission of the learned counsel that the whole prosecution fabric rests on the theory that the returns have been filed in the names of fictitious persons and in furtherance of the conspiracy, A-2 has passed the orders of refund. However, it is the submission of the learned counsel for A-2 that the materials available on record show that many of the persons are not fictitious, but in fact, they are live persons, against whom penalty proceedings were initiated in furtherance of the steps taken by A-2 and the Commissioner of Income Tax had levied penalty on the said persons, which have been paid by those persons. Such being the case, the theory of the prosecution that assessments were filed under the names of fictitious persons, who were created by A-1 and P.W.s 1 and 2 in furtherance of the conspiracy with A-2 to A-4 not only stands defeated by the materials available on record, but it is merely a fictitious story concocted by the prosecution to rope in A-2 within the ambit of the provisions of the PC Act.

37. It is the further contention of the learned counsel for A-2 that the assessments form the fulcrum of the case of the prosecution and the assessments spreads through a period of three years and that the said assessments are filed u/s 143 (1) (a) of the Income Tax Act, which are summary assessments, meaning thereby, that the said assessments, after scrutiny by the subordinates of A-2, viz., P.W.s 18 and 20, the Income Tax Inspectors, have been placed before A-2 for the purpose of approval, which, in turn, in these cases, resulted in refund orders being passed. It is the submission of the learned counsel for A-2 that the assessments, being summary in nature, and the same having been scrutinised by his subordinates and passed for refund, the duty cast on A-2 is to verify that the same have been scrutinised properly and on satisfaction, A-2 is duty bound to pass the assessment. It is not incumbent on A-2 to initiate a roving enquiry into the assessments, as these assessments are summary assessments and not scrutiny assessments. Only scrutiny assessments are to be probed in-depth and not summary assessments and in that view of the matter, A-2, having satisfied himself that his subordinates have properly scrutinised the assessments has passed the refund orders, which cannot be termed to be a tainted one, merely because some of the assessments have been under fictitious names, as claimed by the prosecution. It is the submission of the learned counsel for A-2 that as an income tax officer, it is not the duty of A-2 to verify as to the bona fides of the assessee, as to whether they are existing or fictitious and only the income that is projected in the return needs to be looked into and on satisfaction, the same requires to be approved, which procedure has been followed by A-2.

38. It is the further submission of the learned counsel for A-2 that the genuineness and truthfulness of the act of A-2 would stand reflected in the penalty proceedings, Ex.D-1, initiated against Samiappan and the payment of the penalty imposed on the said Samiappan, as reflected in the payment challan, Ex.D-2. The above act of A-2 clearly shows that the refund orders passed by A-2 are not mechanical, but with due application of mind.

39. Learned counsel for A-2 further contended that A-2, in cases of entertainment of doubts with regard to the TDS receipts/certificates produced by the concerned assessee, had even written to the concerned certificate issuing authority with regard to its authenticity and only upon receipt of communication authenticating the deduction of the said TDS, the refund orders have been passed. It is the further submission of

the learned counsel for A-2 that the duty of A-2 is to address the concerned authority, who had issued the certificate and it cannot be expected of A-2 to question even the veracity of the said certificates, as A-2 was only required to satisfy himself with regard to the veracity of the said certificates by addressing the concerned authorities and it is not required of A-2 to ascertain the veracity of the letters written by the concerned authorities as it is deemed that the said letters were in effect the replies addressed by the authorities concerned with regard to the query raised by A-2 as regards the TDS certificates issued by the concerned authorities.

40. Learned counsel appearing for A-2 further contended that A-2 had, in fact, addressed a communication to the concerned authority, who had issued the TDS certificate in respect of the assessee, one Loganathan. Though a communication was addressed certifying its veracity, however, it was immediately retracted by the authority by way of a telegram, requesting to stop payment on the said refund stating that no such certificate has been issued from the office of the concerned authority. It is the submission of the learned counsel for A-2 that pursuant to the said communication/telegram, the order for refund was kept in abeyance for almost a year and since no other response was forthcoming from the authority inspite of reminder, A-2 was duty bound to issue the refund order, as mandated by the Central Board of Direct Taxes, as any refund, not granted within a particular time frame, would attract levy of interest at 12% and in order to avoid the same, the refund was ordered. It is therefore the contention of the learned counsel for A-2 that A-2, as a prudent and an upright officer, had taken the requisite steps to ascertain the veracity of the certificates, as and when doubts arose and had ordered the refund after ascertaining the authenticity of the certificates and, therefore, it is not open to the prosecution to contend that there has been dereliction of duty on the part of A-2, which was only for the purpose of enriching the conspirators to the detriment of the exchequer.

41. It is the further submission of the learned counsel for A-2 that even during the previous assessment years, the individuals, who are termed fictitious, have filed assessments, which have been passed by his predecessors. Though certain FIRs came to be filed against them, however, curiously they were dropped, but the present FIR alone has been investigated. It is the submission of the learned counsel that the present assessment orders are a continuation of the earlier assessment orders passed by his predecessors and in the light of the said assessments having been accepted as genuine and no criminal

prosecution having been initiated against the concerned officers, the present criminal prosecution against A-2 clearly exposes the vindictive act on the part of the prosecution to implicate A-2 in the crime, for reasons best known to the prosecution.

42. It is the further contention of the learned counsel for A-2 that even according to the prosecution, P.W.1 had joined the office of A-1 on 5.8.1986 and, therefore, it would have been an impossibility for P.W.1 to know the intricate details concerning each and every assessment filed from the office of A-1. However, P.W.1 has spoken in detail about the assessments filed from the office of A-1, to which he was also a party and had also enriched himself to the tune of lakhs of rupees. But the prosecution, leaving aside P.W.s 1 and 2 from the complicity of the offence, has pinned the crime only on the appellants, which is per se impermissible. It is the further submission of the learned counsel for A-2 that the conduct of P.W.s 1 and 2 in turning approvers is only due to the harassment meted out to them by the prosecution, which casts a serious doubt as to the veracity of their evidence. In fact, their evidence disclose that only after a period of one month from their arrest, they have turned as approvers, which clearly reveal that harassment meted out to them had made them dance to the tune of the prosecution by implicating the appellants.

43. It is the further contention of the learned counsel for A-2 that the learned Magistrates, who had granted pardon to P.W.s 1 and 2 having not been examined, the appellants were precluded the opportunity to find out whether the pardon granted to P.W.s 1 and 2 were in accordance with law. Non-examination of the learned Magistrates, who granted pardon to P.W.s 1 and 2 is detrimental to the prosecution case and has caused much prejudice to the appellants. Further, the proceedings of pardon granted to P.W.s 1 and 2 were also not made available to the appellants, which strikes at the root of the prosecution case and non-furnishing of the pardon proceedings to the appellants vitiates the prosecution.

44. It is the further contention of the learned counsel appearing for A-2 that the proceedings of pardon granted to the approvers, viz., P.W.s 1 and 2 having not been provided to the appellants, the appellants were left in lurch as to whether the proceedings were conducted in accordance with law and this had a detrimental effect on an effective representation which otherwise would have been beneficial to their case, as P.W.s 1 and 2 were initially shown as accused and, thereafter, by lure, were granted pardon to go against the appellants and, therefore,

the proceedings of pardon was a vital document, favouring the defence, and non-supply of the same should be an additive and positive factor in considering the contention of the appellants with regard to their innocence.

45. It is the further contention of the learned counsel for A-2 that the documents, Exs.D-1 to D-8, filed at the instance of the defence, have not been taken into consideration in proper perspective by the trial court, which has caused grave prejudice to the defence of the appellants. Exs.D-1 to D-8 clearly reveal that A-2 was not at all involved in the said conspiracy and had been judiciously and honestly discharging his duties. Non-consideration of the same only reveals the prejudiced mind of the court in favour of the prosecution, which deserves to be interfered with.

46. In fine, it is the submission of the learned counsel for A-2 that the culpability of A-2 in the conspiracy having not been proved in a manner known to law and that the act of A-2 in the discharge of his duties as mandated under the Income Tax Laws having not been under cloud, the fatality of non-consideration of all the above aspects by the trial court definitely vitiates the prosecution and the benefit of the same should definitely enure to A-2 and, therefore, the conviction and sentence imposed on A-2 by the trial court deserves to be interfered with.

47. Learned counsel appearing for A-5 to A-8, who are the beneficiaries, who had conspired with A-1 and have illegally enriched themselves, submitted, that they have made good the loss caused to the exchequer by depositing/paying back the said amounts, which they are alleged to have received in the form of refund orders and, therefore, they may be inflicted with any fine as they court may deem fit, in lieu of punishment, taking into account the age of the appellants/A-5 to A-8, who are senior citizens as on date and aged more than 70 years.

48. Per contra, learned Special Public Prosecutor appearing for the respondent, submitted that the conspiracy between the appellants stand proved through the approvers, viz., P.W.s 1 and 2, who have categorically spoken about the entire episode of filing of bogus/forged income tax returns, preparation of forged TDS certificates, refunds being ordered, which have been encashed through the bank accounts opened under fictitious/bogus names and the bounty that was shared among the various appellants as also the approvers. Once the conspiracy is proved by the prosecution, the other circumstances and evidence falls into place automatically pointing the finger on the appellants

and in that scenario, the burden shifts on the shoulders of the appellants to rebut the presumption and the appellants having not rebutted the presumption in a manner known to law, though not proving the same, the theory projected by the prosecution deserves to be accepted.

49. While countering arguments placed insofar as A-1 is concerned, learned Special Public Prosecutor submitted that the forged IT returns, were prepared by A-1 in connivance with the approvers, viz., P.W.s 1 and 2, who are his employees, in the names of non-existing and some existing persons under the garb of contractors by enclosing forged and bogus TDS certificates, alleged to have been issued by the concerned authorities of the Public Works Department of Tamil Nadu and Karnataka, pertaining to Noyyal Reservoir Scheme, Kangeyam, Siddhamalli Reservoir Project, Jayamkondan, Mettur Hydroelectric Project, Bhavani and Rural Roads Development Project, Mandiya, Mysore.

50. It is the further submission of the learned Special Public Prosecutor that on submission of the said IT returns along with the TDS Certificates, clandestinely under the pretext of the same being summary assessments, the returns were processed and placed before A-2 for the refunds being ordered by A-2 dishonestly and fraudulently, without proper verification as is required of by A-2 knowing fully well that the said TDS Certificates are bogus/forged.

51. It is the further submission of the learned Special Public Prosecutor that the refund orders were encashed by P.W.s 1 and 2 and A-5 to A-8, by opening various bank accounts at various places under fictitious names and forging the signatures of fictitious persons and caused wrongful loss to the IT Department to the tune of Rs.19,25,155/- with corresponding wrongful gain to the appellants as also the approvers.

52. It is the submission of the learned Special Public Prosecutor that the preparation of bogus/fictitious IT Returns and bogus TDS Certificates with regard to each and every transaction have been clearly and explicitly spoken to by P.W.1, who himself has lent his hand in this clandestine transaction to illegally enrich the appellants to the detriment of the exchequer. It is the submission of the learned Special Public Prosecutor that P.W.s 1 and 2 have spoken in detail about the various IT Returns, which were prepared by P.W.s 1 and 2 to the dictates of A-1 and that the TDS certificates for the various IT Returns have been prepared by A-1. It is submitted by the learned Special Public Prosecutor that the evidence of P.W.1 clearly reveals that the various rubber stamps/seals used in the

TDS certificates have been procured by P.W.1 on the directions of A-1.

53. It is the further submission of the learned Special Public Prosecutor that P.W.49, an employee of Mettur Hydroelectric Project, Bhavani, has clearly deposed that the signature found in the TDS certificates, Exs.P-3 and P-7, pertaining to one Sivaraman, were not that of the said individual. The said evidence of P.W.49 has been corroborated by P.W.60, the Handwriting Expert, who has deposed that the signatures found in Exs.P-3 and P-7 tallies with the handwriting of A-1. It is the further submission of the learned Special Public Prosecutor that the evidence of the Handwriting Expert, coupled with his opinion, Ex.P-1318, corroborates the evidence of P.W.s 1 and 2 on all material particulars as regards the forgery committed by A-1 and P.W.s 1 and 2. Further, the above corroboration finds further strength from the evidence of P.W.50, the Deputy Financial Controller of Mettur Hydroelectric Project, who has deposed that the signature found in Exs.P-3 and P-7 are not that of one Sivaraman, who was an employee at the said concern, but are forged ones and the same is further strengthened by the fact that the said Sivaraman, had demitted office in the year 1985, while the TDS certificates pertain to the period thereafter, viz., 1986 and thereafter.

54. It is the further submission of the learned Special Public Prosecutor that to encash the income tax refund orders, bank accounts were opened by A-1 in the name of the fictitious persons/assesseees in various banks and the refund orders were deposited in the said accounts by P.W.s 1 and 2 to be later withdrawn by them and handed over to A-1. In this regard, learned Special Public Prosecutor, drew the attention of this Court to Ex.P-10 the specimen signature card relating to the account opened in the name of a fictitious assessee, viz., Shanmugam. According to the learned Special Public Prosecutor, the said specimen signature is that of P.W.2, who had withdrawn the amounts so deposited under Exs.P-11 to P-13, viz., pay-in-slips. The signature as found in the specimen signature card, Ex.P-10 as also Exs.P-11 to P-13 are that of P.W.2, as spoken by P.W.60, the Handwriting Expert.

55. Learned Special Public Prosecutor, to buttress his argument, drew the attention of this Court to Ex.P-1294, the postal cover addressed by P.W.62, the investigating officer to the address of Shanmugam, as shown in the bank account, which was returned with the endorsement 'No such addressee'. It is the further submission of the learned Special Public Prosecutor that the address as shown in the IT returns and the address

given for opening the bank account in respect of the fictitious person, viz., Shanmugam are different. Learned Special Public Prosecutor, in essence, submits that A-1, being the mastermind, with the connivance of P.W.s 1 and 2, the approvers, who were under his employ, had siphoned off the money by filing various fictitious returns together with forged TDS certificates and the handwriting in the IT returns as also the TDS certificates as also the opening of the various bank accounts and withdrawals from the said accounts having been made by A-1 and P.W.s 1 and 2, having been clearly established through the evidence of P.W.60, the Handwriting Expert, which has been corroborated by the other witnesses, viz., P.W.s 49 and 50 unequivocally proves the involvement of A-1 in the commission of the crime.

56. Insofar as A-2, the income tax officer, who approved the refund orders is concerned, it is the categorical submission of the learned Special Public Prosecutor that without the connivance and help of A-2, the whole scheme plotted by A-1 could not have succeeded. Though there is no direct evidence as regards the demand and payment of money to A-2, however, the evidence of the approvers, viz., P.W.s 1 and 2 are clear about the part played by A-2 and the enrichment obtained by A-2 for his part in the plot. It is the submission of the learned Special Public Prosecutor, that in a case of this nature, it is not incumbent on the prosecution to prove demand and payment of money, as this is not a bribe amount, that is being paid to A-2, but it is tainted money, which has been collusively siphoned off by the appellants to enrich themselves. All the appellants have played a part in the said scheme of things and, therefore, once the prosecution has placed materials showing the collusive act of the appellants, it is for the appellants to rebut the presumption by adducing necessary evidence to vindicate themselves and in the absence of the same, the materials on record have to be analysed collectively to fasten the liability on the appellants, which has been done rightly so by the trial court.

57. It is the submission of the learned Special Public Prosecutor that the act of A-2, as an income tax officer, the guardian of the exchequer, has not only been tainted by the act of A-2, but the act of A-2 reveals the cunningness and calmness with which A-2 has acted to enable the appellants to enrich themselves at the cost of the exchequer. To drive home the above submission, learned Special Public Prosecutor drew the attention of this Court to the evidence of P.W.s 1 and 2, who have categorically deposed that for passing the orders, A-2 used to be paid Rs.5,000/- to Rs.10,000/- per refund order and at

times, A-2 was also provided with four wheeler transportation as and when required by A-1.

58. Learned Special Public Prosecutor also pointed to the deposition of P.W.1 relating to one of the assessee, viz., Loganathan, in the name of whom IT Return was filed. Learned Special Public Prosecutor referred to the deposition of P.W.1 and submitted that A-2 received a letter pertaining to the forged TDS certificate filed for the said assessment, in which deficit postal stamp was affixed, which entailed return of the said letter. The deposition of P.W.1, according to the learned Special Public Prosecutor, further proceeds on the footing that A-1 called P.W.1 and scolded him for affixing insufficient postal stamps and further to the same, A-1 asked P.W.1 to have a seal in the name of 'Chief Engineer, Noyyal Reservoir Project, Kangeyam' made ready and a letter was prepared in the name of the Chief Engineer, in which the signature was affixed by A-1, who handed over the said letter in person to A-2.

59. Learned Special Public Prosecutor also submitted that A-1, on return from the office of A-2, informed P.W.1 that the office of A-2 is likely to be raided and, therefore, asked P.W.s 1 and 2 to destroy all the incriminating papers and seals connected with the aforesaid transactions, which was duly complied with by P.W.s 1 and 2.

60. Learned Special Public Prosecutor, to further point to the culpability of A-2 in the crime, submitted that inspite of receipt of Ex.P-813, the telegram, dated 31.03.1987, requesting A-2 not to disburse the refund orders, as the TDS Certificate is a forged one, A-2, was not only lethargic in the discharge of his duties, as he did not file any police complaint even after coming to know about the spurious nature of the TDS certificate, but went on to adopt a callous attitude and even kept the letter, Ex.P-1192, dated 1.4.87, addressed by P.W.32, with him and held the said file with himself for about a year and, thereafter, passed the refund order. It is therefore the submission of the learned Special Public Prosecutor that the said act of A-2 clearly reveals his part in the conspiracy and his involvement in the crime, without whose help, the crime could not have culminated and taken to its logical end.

61. Countering the submissions of the learned counsel for A-2 that A-2 took diligent steps to check the veracity of the TDS Certificate issued for the said Loganathan, learned Special Public Prosecutor adverted to the deposition of P.W.20 and submitted that it is the categorical submission of P.W.20 that A-2 gave him the file and asked him to enquire into the

genuineness of the TDS Certificate, with a further stress that enquiry be made with A-1 and not with the Executive Engineer, who issued the TDS Certificate, as the said Executive Engineer was not in good terms with A-1. It is therefore the submission of the learned Special Public Prosecutor that but for the involvement of A-2 in the crime, there was no necessity for A-2 to request P.W.20 to check about the genuineness of the TDS Certificate with A-1 rather than with the TDS Certificate issuing authority. Further, it is pointed out by the learned Special Public Prosecutor that the return filed is an individual return and, therefore, there ought to have been no involvement of A-1, who is an income tax practitioner, in the preparation and filing of the said return. However, the directions of A-2 to P.W.20 to enquire about the genuineness of the TDS certificate from A-1 rather than with the issuing authority is nothing but a self-serving declaration by A-2 as to the entire conspiratorial nature of the transaction. This act of A-2 clearly shows his devious mind in executing the plan hatched by the conspirators.

62. Learned Special Public Prosecutor submitted that the culpability of A-2 is further strengthened by the fact that the address of the said Loganathan given in return is not the same as the address to which the refund orders have been despatched. Further, it is submitted by the learned Special Public Prosecutor that P.W.3, the owner of the building bearing the address to which the refund order was sent has clearly deposed that no PWD contractor has ever stayed in the said address and that no letter has been received in the name of any PWD contractor, lest the name of Loganathan. Further, P.W.3 has deposed that no person with name of Loganathan was in occupation of the address in which the account was opened, but the refund order has been sent to the said address only for it to be intercepted by P.W.s 1 and 2 and deposited in the fictitious account from where it was encashed by P.W.s 1. This, according to the learned Special Public Prosecutor, clearly reveals that the whole fabric of the filing of IT Returns ultimately culminating in the refund orders is a conspiracy, hatched by the conspirators to achieve their fraudulent goals.

63. Learned Special Public Prosecutor, highlighted the various IT Returns along with the TDS Certificates, that were processed by A-2 in which refund orders have been sanctioned by A-2, which have been marked as exhibits, and submitted that all those refund orders are based on forged TDS Certificates said to have been issued by four different authorities, viz., Noyyal Reservoir Project, Kangeyam, Siddhamalli Reservoir Project, Jayamkondan, Mettur Hydroelectric Project, Bhavani and Rural

Roads Development, Mandiya Sector, Mysore, which have been disowned by the respective authorities, as spoken to by various witnesses, which inextricably prove the part played by A-2 in the crime. It is the submission of the learned Special Public Prosecutor that A-2 has not discharged his work in the manner it ought to have been discharged by a person holding such a high and responsible position and the act of A-2 is clearly in connivance with the other appellants, which has been inextricably proved by the prosecution.

64. The above act of A-2 clearly reveals that A-2, in connivance with all the other appellants, with the clear intention to defraud the exchequer by sanctioning the refund orders in respect of the fictitious returns on the basis of the bogus/forged TDS Certificates has committed an act, which squarely attracts the provisions of the Prevention of Corruption Act and rightly so has been convicted by the court below.

65. Insofar as the allegations as against A-5 to A-8, it is the submission of the learned Special Public Prosecutor that they were not PWD contractors, but were cloth merchants and LIC agent, which is evident from the records and they have been having business transactions with A-1 and in order to illegally enrich themselves, they have played their part in the crime by lending their assistance in receiving the despatched refund orders and handing it over to P.W.s 1 and 2 for which they were paid by A-1. The handwriting expert, P.W.60 has categorically opined that many of the incriminating documents, which have been marked by the prosecution have been written by A-5 to A-8 and that the handwritings thereon match with the admitted handwritings of A-5 to A-8 and, therefore, the part taken by A-5 to A-8 have been clearly established by the prosecution. The above evidence of P.W.60 has been corroborated not only by P.W.s 1 and 2, but also by other witnesses, who have also spoken about the signatures found on various documents as not that of the person, who is alleged to have signed it. It is therefore the submission of the learned Special Public Prosecutor that the act of A-5 to A-8 in the conspiracy has been proved beyond doubt by the prosecution.

66. Insofar as the allegations against A-3 and A-4 are concerned, learned Special Public Prosecutor submits that the connivance of A-3 and A-4 in the conspiracy stands established not only through the evidence of P.W.s 1 and 2, the approvers, who have spoken about the amounts that were paid to A-3 and A-4 for the purpose of dispatching the refund orders, but also for handing over the refund orders to P.W.s 1 and 2 and A-1. It is the categorical deposition of P.W.s 1 and 2 that though the

address in the income tax assessments are different, the refund orders were sent to specific addresses at Erode.

67. To corroborate the said evidence of P.W.s 1 and 2 with regard to the involvement of A-3 and A-4 in the crime, learned Special Public Prosecutor submitted that the evidence of P.W.37 lends credence not only to the deposition of P.W.s 1 and 2, but also speaks about the manipulations done by A-3 and A-4 in the Dispatch Register and Special Journal. It is the deposition of P.W.37 that though the Dispatch Register shows a particular address to which the refund has been sent, however, the Special Journal does not reflect the said address. According to P.W.37, the entries of address in both the Dispatch Register and the Special Journal should be one and the same, which will only prove that the said refund order has been dispatched to the said address. Therefore, the evidence of P.W.37 clinchingly proves that A-3 and A-4 had connived with all the appellants in siphoning off the funds and, thereby, illegally reaped gains to the detriment of the exchequer, and the trial court, on proper appreciation of the materials on record has found A-3 and A-4 guilty of the offence.

68. In fine, it is the submission of the learned Addl. Public Prosecutor that the prosecution had produced very many documentary materials, which have been spoken to by the witnesses in detail, establishing the nexus of the appellants and the conspiracy hatched between them with a clear intent not only to cause financial loss to the exchequer, but also to enable the appellants to obtain pecuniary advantage and, therefore, the trial court, on thorough analysis of the materials, both oral and documentary, has come to the inexplicable conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt and had convicted and sentenced the accused as above and, therefore, no interference is warranted with the well considered findings recorded by the court below.

69. This Court paid its unceremonious attention to the vociferous and vehement submissions advanced by the learned counsel appearing for the respective appellants and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record to which this Court's attention was drawn by either side. This Court also browsed through the various decisions cited by the learned counsel for the appellants.

70. The following issues arise or consideration in these appeals :-

1) Whether the prosecution has established the charge u/s Section 120 (B) IPC.

2) Whether the evidence of P.W.60, the Handwriting Expert, coupled with the evidence of P.W.s 1 and 2 and the evidence of other witnesses proves the culpability of A-1 in the commission of the crime.

3) Whether the nexus and culpability of A-2 in the conspiracy has been proved by the prosecution.

4) Whether the act of A-2 in ordering refund of the amounts inspite of the letter of the TDS certificate issuing authority proves the culpability of A-2 in the crime.

5) Whether the stand of A-2 that detailed scrutiny is not required in summary assessment for order of refund is legally sustainable.

6) Whether the prosecution has proved the case as against A-3 and A-4 through infallible evidence.

7) Whether the prosecution has proved the case as against A-5 to A-8 through infallible evidence.

8) Whether the evidence of the approvers is sufficient to sustain the prosecution case.

9) Whether non-furnishing of the proceedings of pardon granted to the approvers coupled with the non-examination of the Magistrates, who granted pardon, vitiate the prosecution.

10) Whether the prosecution has proved its case that the returns have been filed in the name of bogus/fictitious persons.

71. Before advertng to the various issues as formulated above, the role and importance of an income tax officer vis-a-vis an income tax practitioner and the functioning of the income tax department cumulatively needs to be understood so as to have a holistic approach while dealing with the issues.

72. Filing of assessment relating to the income earned by an individual every year is a fulcrum of the exchequer in mobilising funds for the welfare activities of the nation. Time and again, to enable even the evaders, who realise their duties and responsibilities towards their share to the nation, the Government, through various one time schemes, allow such of those persons, who have not filed assessments or disclosed their

earnings/income to come out with clean hands by voluntarily disclosing their income, which is assessed to tax without putting any penalties on such of those individuals.

73. Though the population of the country spirals sky high, however, the country is fortunate enough to have a good number of educated graduates in various fields and faculties, unfortunately, in spite of having the best policies of our country, many of our graduates have to resort for the "brain-drain". However, educated graduates, having confidence in their intelligence, knowledge and educational capacities straight-away aspire to take up different professions, such as management consultants, financial consultants, lawyers, chartered accountants, and income tax practitioners, etc. One such profession is that of an "Income Tax Practitioner" which allows carrying on with the Profession with the least and most reasonable qualifications. To be and become a Registered Income Tax Practitioner, apart from Section 288(2)(vi) of the Income Tax Act, 1961, certain positive and assured Rules of the Income Tax Rules, 1962, (particularly Rules 12A, 49(a), 50 or 51, 53, 54 and partly Rule 55) are applicable in connection with Registration as Authorized Income Tax Practitioners.

74. Tax practitioners assist their clients or taxpayers in adhering to their tax obligation as established by legal frameworks within their jurisdiction. Clients engage tax practitioners in order to receive professional advice and services toward filing accurate returns. The tax practitioner is responsible for accurately advising the client as per the taxation laws within their jurisdiction. The tax practitioner should ensure that the information required is delivered in an honest manner clear of misrepresentation. While, the tax practitioner is the starting point in the sequence of events relating to filing of an assessment, the finalising point in the said sequence is that of the Income Tax Officer of the Department.

75. The Income Tax Officers are responsible for assessing the correct income of the assessee who have already filed their returns. They are clothed with the power to call for information for completion of assessment and in cases, can seek for explanation relating to any investments made by the assessee not reflected in the returns and that the tax due from the assessee gets deposited in the account of the Government in time. For discharging this duty, the income tax officers take the aid of their subordinate staffs in assessment of the returns. The joint effort of the income tax practitioner and the income tax officer results in the exchequer receiving its

share of the tax. Ironically, any fraud played by the income tax practitioner and the income tax officer results in financial weakness to the exchequer and, thereby cause destabilisation of the economy of the country.

76. Tax deduction at source (TDS) is an instrument designed for quick and smooth collection of tax due to the authorities from the taxpayer. The objective of TDS could be said, in general, to be maximisation of revenue collection while minimising the cost of collection. For example, it should be easier to deduct tax from all employees by one employer than for the tax administration to collect from each individual separately. This is so especially for wage and salary income; and this is why income is subject to tax at the sourcing point in a wide cross section of countries. The problem of tax evasion is a fundamental reason for expanding the scope of TDS. Tax evasion is a universal phenomenon. It takes place in all societies, all social classes, all professions, all industries, and all economic systems. It depends on the economic and tax structures, types of income, and social attitudes. The broad spectrum of the taxation structure is channelised in such a manner, that constant and continuous efforts are made by the Government to weed out the sludge so that flow of economy is on the ascendance, which in turn, would provide the much needed impetus for improving the social and peaceful living of the citizens in the country.

77. This Court, considering the nature of the case involved as also the persons, who are involved in the offence, belong to various categories, deems it fit and proper to compartmentalise them under different groups based on their roles in the conspiracy, their culpability and their involvement in the offence, discuss the evidences available on record against such of those persons to arrive at the composite complicity of those persons in the commission of the crime. On an analysis of the entire prosecution theory, the appellants can be categorised under three groups and the issues framed above, pertaining to those persons are dealt with accordingly, barring the general issues that are discussed in a composite fashion :-

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- Group - 1 : A-1, P.W.s 1 and 2 (Issue No.2)
(The Perpetrators)
- Group - 2 : A-2 to A-4 (Issue Nos.3 to 6)
(The Developers)
- Group -3 : A-5 to A-8 (Issue No.7)
(The Insulators)

GROUP - 1 - A-1, P.W.s 1 & 2
INCOME TAX PRACTITIONER & APPROVERS - PERPETRATORS

ISSUE NO.2 :

Whether the evidence of P.W.60, the Handwriting Expert, coupled with the evidence of P.W.s 1 and 2 and the evidence of other witnesses proves the culpability of A-1 in the commission of the crime.

78. It is the case of the prosecution that A-1 is the driving force behind the whole conspiracy and as an income tax practitioner, A-1, using the services of P.W.s 1 and 2, had prepared the bogus income tax returns, forged the TDS certificates in the names of four governmental agencies and opened bank accounts in the name of fictitious persons and obtained refund orders from A-2, who was also involved in the conspiracy and had them encashed and, thereby, unjustly enriched themselves.

79. The prosecution, in order to prove their case, had examined very many witnesses, who fall under five categories. They are :-

- 1) The officials of the various Governmental Agencies who are said to have issued the TDS Certificates - P.W.s 49, 59 & 61 ;
- 2) Income Tax Officers to speak about the procedure followed in processing of returns and ordering refunds - P.W.s 4, 5, 7, 15, 17 to 20, 23, 37, 47, 48, 53, 54 & 57 ;
- 3) Officials of the Postal Department to speak about the delivery of the postal covers sent by the Income Tax Department - P.W.s 24, 27, 38, 40, 41, 44 & 45 ;
- 4) Owners of the premises, where the assesses are said to be residing as reflected in the income tax returns - P.W.s 6, 9, 10, 42 & 43 ; and
- 5) Officials of the banks where accounts were opened under fictitious names for depositing and encashing

the refund orders - P.W.s 8, 11 to 14, 16, 22, 25, 26, 28, 29, 30, 33 to 35, 39, 46 & 56 ;

6) Officials of Public Works Department / Electricity Board, viz., the officers in the office of the TDS issuing authority - P.W.s 21, 31, 32, 52, 58, 59 & 61.

80. A perusal of the evidence of P.W.s 1 and 2, who were employed under A-1 and who were alleged to be hand in glove with A-1 in perpetrating the crime, but later turned approvers, categorically reveals about the various acts of A-1 in utilising them for preparing the bogus/fictitious income tax returns and filing the same along with the necessary TDS certificates, which were forged by A-1 as if the said certificates have been issued by the concerned governmental agencies.

81. However, as stated above, it is the vociferous contention of the learned counsel for A-1 that A-1 is not at all an income tax practitioner; that the original records, which reveal the innocence of A-1 have not been placed before the court and no access was given to A-1 to prove his innocence; that the case of the prosecution that the persons, who filed the assessments were fictitious is not borne out by records, as in many cases penalty proceedings have been initiated against the said assesses and penalty has also been paid by those assesseees; that the returns have been filed by individual assesseees and that it has not been filed through any auditor; that the reliance placed on the evidence of the approvers, in the absence of corroboration for the same, is an inadmissible piece of evidence as the approvers have also been part of the larger conspiracy alleged and only for the purpose of strengthening the prosecution case, the approvers have been projected through coercion and pardon; that granting pardon to persons, who had equal complicity in the crime clearly shows a pick and choose method adopted by the prosecution, which is per se impermissible; that no independent witnesses have been examined to corroborate the evidence of P.W.s 1 and 2; that the postman, who is said to have delivered the refund orders to P.W.s 1 and 2 has neither been examined nor made a conspirator, which strikes at the root of the prosecution case; that the specimen signature of A-1, not obtained in Court, cannot be the basis for comparison with the signatures found in the TDS certificates; that no witnesses have been examined to corroborate the deposition of the handwriting expert and in view of all the collective flaws in the prosecution case, the case of the prosecution as against A-1 does not have any legs to stand.

82. The important evidences that are required to be considered for appreciating the case as against A-1 are the evidence of P.W.s 1 and 2, the approvers, the evidence of the handwriting expert, viz., P.W.60, the evidence of P.W.49, an employee at Mettur Hydroelectric Project, the evidence of the investigating officer, P.W.62 and the connected documentary evidence.

83. P.W.s 1 and 2 have categorically spoken about the acts which they have done at the behest of A-1. They have also spoken about the acts done by A-1 in preparing TDS certificates, forging the signatures and affixing forged seals as if the said TDS certificates have been issued by the concerned authorities. In spite of lengthy cross examination, a perusal of the evidence of P.W.s 1 and 2 reveals that their evidence is not at variance with their deposition in chief. The said evidence tendered by P.W.s 1 and 2 are not only exhaustive, but also inculpatory, not only against them, but also against A-1. Though the evidence of P.W.s 1 and 2 are exhaustive, however, it is attacked on all the forefronts by the learned counsel for A-1 contending that there are inconsistencies and infirmities in their evidence and, therefore, it would be wholly unsafe to confirm the conviction on the basis of such evidence.

84. The Hon'ble Apex Court, in the case of State of H.P. - Vs- Lekh Raj (2000 (1) SCC 247), relating to discrepancies in the evidence of the witnesses, has held as under :-

"7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness

was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person."

85. In Rohtash Kumar - Vs - State of Haryana (2013 (14) SCC 434), the Hon'ble Supreme Court had laid down the proposition in the appreciation of evidence of witnesses with regard to the discrepancies in their evidence and in this regard, held as under :-

"24. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant, details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of

the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48], State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639])"

86. Keeping the above proposition of law laid down by the Hon'ble Apex Court, above, a careful analysis of the evidence of the witnesses, clearly reveal that though there are certain contradictions in the evidence of the witnesses, more especially P.W.s 1 and 2, whose evidence is pivotal to the case of the prosecution, nevertheless, by no stretch of imagination, could their evidence be termed to be wholly unsafe to be relied upon in appreciating the entire prosecution case. The contradictions in the evidence of P.W.s 1 and 2 as also the other witnesses are minor contradictions, which are prone to happen in the evidence, which is given in court after a considerable gap of time. Human memory is not infallible to remember even the faintest detail and narrate the same in a cogent and clear manner. The gap between the occurrence and the time when the witnesses are examined in court definitely creates a cloud in the mind of the witnesses as to the remembrance of minutest detail and the witnesses are prone to contradict their own evidence with regard to certain instances. In such of those times, it is for the court to read through the evidence of those witnesses as a whole and arrive at a subjective finding as to whether their evidence can be believed to be true. Mere contradictions, if they are minor in nature, would not be a ground to throw out their evidence in toto to the benefit of the accused, as such an act would only entail in the prosecution case being rejected in all cases, as the witnesses in majority of the cases are prone to commit certain errors. The weightage of those errors need to be

taken into consideration with reference to either accepting or rejecting their evidence.

87. In the case on hand, the contradictions pointed out on behalf of A-1 are of such a nature, which are prone to happen over a period of time between the occurrence and the examination of the witnesses in court and it is to be pointed out that if such contradictions are not available in the evidence of P.W.s 1 and 2, in such a scenario, this Court would have to dissect their evidence vis-a-vis the other evidence on record to come to a definitive conclusion as to whether to accept their testimony, as such a scenario would definitely leave a casting impression in the mind of this Court that there is a chance of the witnesses being tutored. But in the case on hand, such is not the scenario and the witnesses have contradicted themselves in certain places, which contradictions does not affect the substratum of the prosecution case and, in fact, the said contradiction and inconsistencies only lends more credence to accept their evidence.

88. It is true that contradictions in the evidence of the witnesses should be looked into while arriving at the complicity of the accused in the crime. However, not all phases of the testimony of the witnesses require microscopic examination, as due to the length of time between the occurrence and the examination of witnesses before the Court, there is prone to be certain discrepancies/embellishments/contradictions in the evidence of the witnesses. So long as those discrepancies does not strike at the root of the prosecution case, such of those discrepancies need not be given much weightage to throw out the prosecution case. Minor discrepancies alone would not suffice to brush aside the evidence of the witnesses. In such a backdrop, a careful perusal of the evidence of P.W.s 1 and 2, both in chief and cross examination, reveals that they have spoken in unison and in categoric terms about the acts performed by them to the dictates of A-1 in perpetrating the crime, viz., preparing of the income tax assessments, procuring of seals affixing their signatures and also enriching themselves in the bounty secured through illegal means. Merely because the approvers, viz., P.W.s 1 and 2 were also compositely involved in the occurrence and, thereafter, they have turned approvers, would not be a ground to discredit their evidence. Their evidence is cogent and does not suffer the vice of major discrepancies which would be a ground to discredit their evidence. The defence, inspite of searching and probing cross examination has not pierced through thier defence to bring out any major contradiction, which would tend to have a detrimental

effect to their testimony and in essence strike at the root of the prosecution case.

89. In such a scenario, once this court has come to the conclusion that the evidence of P.W.s 1 and 2 is cogent and convincing, though the evidence of the said approvers is suffice to render a conviction insofar as A-1 is concerned, however, in the present case, the approvers, viz., P.W.s 1 and 2 having also been intricately involved in the offence and have enriched themselves reasonably, but turned approvers later in point of time, which bolsters the prosecution case, it is but the duty of this Court to find out whether their evidence finds corroboration on all material particulars through the evidence of other witnesses and documentary evidence.

90. The complicity of A-1 in the offence, as spoken to by P.W.s 1 and 2 receives corroboration from the evidence of P.W.49. P.W.49 is the Junior Assistant working in the office of the Chief Superintending Engineer, Mettur Hydroelectric Division, who, in chief examination has categorically deposed that the signature found in the TDS certificates, Exs.P-3, P-7 and P-53, are not those of one Srinivasan, who was the Accounts Officer, as the said Srinivasan had retired way back in the year 1985 itself. It is to be seen at this juncture that the assessment years relate to the period 1985 - 1987. The person, who is alleged to have signed the TDS certificates mentioned above, one Srinivasan, had retired in the year 1985 itself, as is evident from the deposition of P.W.49. Though P.W.49 had been cross examined in extenso by A-1, however, the defence was not able to breach his evidence.

91. However, a contention is raised by the learned counsel appearing for A-1 that the prosecution ought to have examined the said Srinivasan, who would be the best person to speak about his signature and the examination of P.W.49 to prove that the signature is not that of the said Srinivasan is impermissible, as it is not the case of the prosecution that the said Srinivasan is no more.

92. Though such a contention, on the face of it looks attractive, but the same cannot be accepted for more than one reason. P.W.60 is the handwriting expert, who has given his opinion on the signatures as is appearing in the income tax returns and the TDS certificates. P.W.60 has analysed the questioned signatures with the specimen signatures and the admitted signatures of the appellants. Insofar as A-1 is concerned, P.W.60 has categorically deposed that the specimen signature of A-1 relate to Ex.P-786 and the said signature

tallies with the questioned signatures in the TDS certificates. Similarly, the specimen signature of P.W.1 relate to Ex.P-785 and the specimen signature of P.W.2 relate to Ex.P-1320 and they too tally with the questioned signatures in the Income Tax Returns prepared and filed by P.W.s 1 and 2. In spite of detailed cross examination, the defence has not elicited anything beneficial to their side of the case.

93. It is the further contention of the learned counsel for A-1 that the opinion of the expert is a weak piece of evidence and, therefore, placing reliance on the same to justify conviction recorded for A-1 is wholly unsustainable, in the absence of corroboration from other oral and documentary evidence.

94. The Hon'ble Supreme Court, even as early as in the year 1980, in *Murari Lal v. State of M.P.* (1980 (1) SCC 704), had dealt with the value of the evidence of an expert, more especially a handwriting expert and in that context, held as under :-

"4. We will first consider the argument, a stale argument often heard, particularly in Criminal Courts, that the opinion-evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses - but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of

finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence" [Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his Evidence].

5. From the earliest times, courts have received the opinion of experts. As long ago as 1553 it was said in Buckley v. Rice-Thomas [(1554) 1 Plowden 110] :

"If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns. This is a commendable thing in our law. For thereby it appears that we do not dismiss all other sciences but our own, but we approve of them and encourage them as things worthy of commendation."

6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like Illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a

handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of a handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

(Emphasis Supplied)

95. In a recent judgment in Padum Kumar - Vs - State of U.P. (2020 SCC OnLine SC 32), the Hon'ble Apex Court has reiterated the ratio laid down in Murai Lal's case (supra) and held that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence.

96. From the above proposition of law adumbrated by the Apex Court, it is clear that prudence warrants necessity to receive corroboration from the evidence of the other witnesses before the opinion of the expert is accepted and acted upon and once the corroboration is received, the Court is bound to act on the said opinion to arrive at a substantive conclusion.

97. In the case on hand, the opinion of P.W.60 is categorically clear that the specimen signatures of A-1, P.W.s 1 and 2 tally with the questioned writings which were forwarded and were examined by P.W.60. The evidence of P.W.s 1 and 2 vis-a-vis the evidence of P.W.60 are mutually inclusive and corroborate each other on all material aspects relating to the preparation of income tax returns by P.W.s 1 and 2 in the names of fictitious persons and also the alleged TDS certificates bearing the signature of A-1, which in effect show that the TDS certificates are forged and have come out of the handiwork of A-1 and have not been issued by the respective authorities.

98. In this backdrop, the evidence of P.W.49, discussed supra, deserves to be looked into. As already stated, P.W.49 has deposed that the signatures in the TDS certificates, Exs.P-3, P-7 and are not those of one Srinivasan, who was the Accounts Officer. Though it is contended by the learned counsel for A-1 that the prosecution ought to have examined the said Srinivasan and relying on the evidence of P.W.49 to disprove the signature as is found in the TDS Certificates is wholly unacceptable, but the same deserves to be rejected for the reason that P.W.60 had clearly opined that the signature in the TDS certificates are that of A-1 and, thereby, corroborates the evidence of P.W.49. A perusal of Exs.P-3, P-7 and P-53 reveal that the said TDS certificates are dated 11.3.87, 12.12.86 and 31.3.87, much later to the said signatory, Srinivasan's retirement. Therefore, the said Srinivasan not being in service at the relevant point of time, his non-examination cannot be put against the prosecution. Therefore, this Court is of the considered view that the prosecution has clearly proved the complicity of A-1 in the crime.

99. It is the further case of A-1 that he was not a full fledged income tax practitioner and further all the returns are individual returns, filed by the individuals and nowhere it is stated that the returns are being filed by A-1 on behalf of the said individual assesseees. Though such a contention has been raised on behalf of A-1 the same does not merit acceptance for the reason that P.W.60 has categorically opined that the income tax returns bear the handwriting of P.W.s 1 and 2, who are employees of A-1 and further the TDS certificates have been

forged by A-1 and that the specimen signature of A-1 tallies with the signatures found in the TDS Certificates. In such a scenario, it is the ardent duty of A-1 to establish/rebut as to how his handwriting is found on the TDS certificates, as spoken to by P.W.60. However, no answers favouring his case having been elicited from P.W.60 and, therefore, the handwriting being that of A-1 having found in the TDS Certificates, which have been enclosed along with the income tax returns, which were prepared by P.W.s 1 and 2 in the names of fictitious persons and the fact that P.W.s 1 and 2 were in the employ of A-1 unerringly points the finger on A-1 as the developer and kingpin in the plan to deceive the exchequer by filing bogus returns along with forged documents.

100. It is the further contention of the learned counsel for A-1 that only for the purpose of implicating A-1 in the crime, the crime committed by P.W.s 1 and 2 were fastened on A-1 as well for reasons best known to the prosecution and that is the reason, the perpetrators of the crime were made as approvers for roping in and fastening the culpability on A-1. The above contention at the instance of A-1 is nothing but an attempt to hold on to the last bit of straw available to A-1 to exculpate himself from the clutches of the prosecution and the same deserves to be rejected for the simple reason that according to the prosecution, A-1 was the employer of P.W.s 1 and 2, who have been utilised by A-1 to putforth his illegal racket for enriching himself as also the other conspirators in the crime. True it is that the prosecution, to nab the kingpin in the crime, has resorted to drop prosecution against P.W.s 1 and 2 which they have achieved as P.W.s 1 and 2 have been granted pardon in accordance with law u/s 306 Cr.P.C., which tactics though can be said to be not in good taste, but nevertheless has the legal sanction under the Code of Criminal Procedure. The Legislature, in its wisdom, for the purpose of catching the bigger fishes in such cases, has thrown the meat to the smaller fishes by providing for pardon under the Criminal Procedure Code, which is only for the specific purpose of achieving a particular objective. If really A-1 was so innocent as claimed, A-1 could have placed necessary oral and documentary materials and rebutted the presumption provided under the Prevention of Corruption Act, which he failed to do.

101. A careful perusal of the materials available on record reveals further complicity of A-1 in the crime. It is the categorical submission of the learned counsel for A-1 that he is not an income tax practitioner. In that regard, no worthwhile evidence has been placed to disprove the case of the prosecution. Equally, A-1 has failed to establish how his

handwriting found its way into the TDS certificates, which were annexed with the income tax returns.

102. Insofar as the income tax return pertaining to one Shanmugam is concerned, a bare perusal of the income tax return and the specimen signature card with the bank reveals that the signature of the assessee is different even to the naked eye. What is more relevant here is that the signature in the specimen card does not even tally with the signature affixed in the pay slip. However, for reasons best known, the bank has honoured the pay-in slip. Further, it is to be pointed out here that the address given in the income tax return and the address given in the bank records are at variance.

103. In the case of another income tax return in the name of Saravanan, the fictitious nature of the transaction is awfully clear on a bare perusal of the signature affixed in the income tax return, Ex.P-20 and the specimen signature card, Ex.P-19 in the custody of the bank. The signature is not only at variance in the income tax return and the specimen signature card, but what is more curious to note is that the introducer for the said Saravanan opening the account is shown as Thangamani, who is A-1 in this case. No reason whatsoever is forthcoming from A-1 insofar as this aspect of the matter is concerned and there is no rebuttal by A-1 in this regard.

104. Similarly, in respect of another assessee, Mani, the signatures in both the income tax returns and the specimen signature card varies, which is even evident to the naked eye and does not require an expert to testify as to the forgery committed with regard to the said signatures. The only additive factor that could be taken from the opinion of the expert is as to the person, who has filled in the income tax return and affixed the signature.

105. On top of all the above assessees, in the whole gamut of the conspiracy, the return filed in respect of one G.Venkatesan is on a totally another plane. A perusal of the income tax returns reveal that the said Venkatesan has signed in tamil in all the returns, viz., Exs.P-73 to P-102, curiously, in the account opening form, the said Venkatesan has signed in English. The evidence of P.W.s 1 and 2 clearly reveal that they have prepared the said income tax returns and opened the accounts at the behest of A-1 and that P.W.60 has opined categorically that the handwriting of P.W.s 1 and 2 is found in the income tax returns and that the TDS return accompanying the said returns are in the handwriting of A-1.

106. One more important aspect, which needs to be pointed out at this stage is that, according to the learned counsel for A-1, he is not an income tax practitioner and that he has not filled up any forms, but the forms have been filled up only by P.W.s 1 and 2 and only as a vindictive measure that he is being implicated. However, the said contention fails for one very simple reason. Leave aside the fact whether A-1 is an income tax practitioner or not and also leaving aside the fact that he has not filled up the returns, but the opinion of P.W.60 clearly points the finger on A-1 as the person who has prepared the TDS certificates, which has been tagged alongwith the income tax returns to claim the refund. If as claimed by A-1, he is in no way connected with the crime, it is for A-1 to have demonstrated that the handwriting found in the TDS certificates does not belong to him. Neither such demonstration has been made from the evidence of P.W.60 or even independently witnesses have been examined to refute the claim of P.W.60 and establish that A-1 has not written/signed in the TDS certificates. However, A-1 has failed in not only rebutting the presumption, but also has not placed any specific material from which another set of inference could be drawn and in such a scenario, the attempt on the part of the learned counsel for A-1 to argue that A-1 is not an income tax practitioner not only merits any acceptance, but is wholly irrelevant to the materials available on record.

107. The glaring discrepancies, as narrated above, are given only in respect of a few assesseees, as named above. But the records clearly reveal that the above discrepancies are found in all the returns and that the handwriting in the said returns tally with P.W.s 1 and 2, who have rightfully accepted their culpability, only to be granted pardon at a later point of time before trial and that the handwriting in the TDS certificate is that of A-1.

108. A conjoint analysis and appreciation of the entire materials, as pointed out above, unerringly and clinchingly point the finger on A-1 as the driving force in the perpetration of the crime. The court below, in earnestness, has analysed all the evidence and has come to the inescapable conclusion that the prosecution has proved the complicity of A-1 in the commission of the crime and, therefore, the findings recorded by the court below insofar as A-1 is concerned does not require any interference.

GROUP - 3 - A-5 TO A-8
FRAUDULENT TAX ASSESSEES - INSULATORS

ISSUE NO.7 :

Whether the prosecution has proved the case as
against A-5 to A-8 through infallible evidence.

109. Insofar as A-5 to A-8 are concerned, learned counsel appearing on their behalf, as already stated above, has submitted that A-5 to A-8 have made good the loss to the exchequer and, therefore, leniency may be shown to them while sentencing them. In effect, it is accepted by the learned counsel for A-5 to A-8 that the said appellants have partaken in the crime and, though, have enriched themselves, but, subsequent to the filing of the case, have made good the loss and, therefore, their case may be considered sympathetically.

110. Though this Court accepts the said submission, however, the materials available on record also points unerringly to the culpability of the said accused in the perpetration of the crime, which this Court would summarise in short.

111. First of all, the deposition of P.W.60, the handwriting expert, conclusively proves that A-5 to A-8 had involved themselves in affixing their signatures in the forged documents, which stands proved from the comparison of their specimen signatures with that of the questioned documents. The said fact is evident from the opinion, Ex.P-1318 given by P.W.60. Further, A-5 in his answers to the questions posed u/s 313 Cr.P.C. has admitted the receipt of the refund orders and encashing the same, though he has gone on to say that it was against the dues from A-1. However, what is relevant to be looked in is that the TDS Certificates were for the contracting works, alleged to have been carried out, but as is relevant from the materials available on record, A-5 is in the business of garments and is not a contractor. That being the case, the income tax returns filed in his name for which he has received the refund orders for the alleged contract works carried out by him for the public works department is false and, therefore, the TDS certificate, issued for the said work could only be termed to be a bogus and forged one.

112. Insofar as A-6 is concerned, P.W.1 has categorically deposed that A-6 had signed in Exs.P-591, P-592, P-594 to P-596, which were prepared by P.W.s 1 and 2. Further, P.W.1 has also deposed that A-6 is a LIC Agent and not a PWD contractor. The

signatures of A-6 in the above documents stands admitted by him and the same has also been corroborated by P.W.60, the handwriting expert. Similarly, the signature of A-7 in the withdrawal slips, viz., Exs.P-383 to P-387 and P-390 has also been proved through the evidence of P.W.60. One more aspect, which merits consideration is the identification of A-7 in court by P.W.2 as one of the beneficiaries in the said conspiracy, which is a substantive evidence.

113. Insofar as A-8 is concerned, it is borne out by record that A-8 is in the business of textiles and that A-1 is the auditor of A-8. P.W.s 1 and 2 have spoken about the said fact and that the Income Tax Returns were filed by A-1 in the name of A-8 for which A-1 had prepared the forged TDS certificates. The culpability of A-8 is further proved by the fact that the refund orders issued in the name of A-8 were encashed by him through SB A/c No.1082, viz., Ex.P-536. Further, the deposit slips, Exs.P-1313, P-1314 and P-1315 were encashed by A-8. The above act of A-8 clearly shows that he has definitely aided A-1 in perpetrating the crime.

114. The forgery of the TDS certificates for which refund orders were issued in the names of A-5 to A-8, have been clearly spoken to by P.W.s 21 and 32, who have categorically deposed that they have not issued the TDS Certificates, which have been attached along with the Income Tax Returns to claim the refund. Therefore, it is categorically clear that A-5 to A-8 have conspired with A-1 and P.W.s 1 and 2 to gain pecuniary advantage and, therefore, their involvement in the offence, on the basis of the records, have been established by the prosecution, which has been appreciated in a just and reasonable manner by the court below to convict A-5 to A-8.

GROUP - 2 - A-2 TO A-4
(DEVELOPERS)

115. Before embarking upon analysing the evidence with regard to the culpability of A-3 and A-4, who were despatch clerks in the income tax department, a bird's eye view of the working of the income tax department with regard to filing of income tax returns, its assessment culminating in the passing of the final order, be it for refund or for acceptance is concerned, needs to be looked into.

116. Every person, who earns an income is bound to submit a return of income in the prescribed form, if the income earned by an individual exceeds a particular threshold limit. To identify each person, whose income is assessed to tax, the said person/assessee is identified by means of provision of a

specific number. In this regard, the Government of India introduced the system of Permanent Account Number (for short 'PAN') in the year 1972, which was adopted into the statute in the year 1976 vide introduction of Section 139A to the Income Tax Act. On and from the year 1995, PAN was made compulsory and mandatory for all persons earning a particular limit of income, which is assessed to tax. Prior to making PAN compulsory, i.e., prior to 1995, General Index Reference Number (for short 'GIR') was assigned to each assessment of tax. The period of assessment in the present case being prior to 1985 - 1987, GIR number was in vogue.

117. A person, who files an assessment with regard to the income for the particular year, is supposed to file it in the prescribed form along with the requisite proof. Any person, who claims refund of tax in lieu of Tax Deducted at Source (for short 'TDS'), is required to file the requisite assessment along with the original TDS certificates issued by the concerned tax deducting authority and in such cases, it is the duty of the assessing officer to verify and satisfy himself about the factum of remittance of the tax deducted to the credit of the department from the assessee, who is claiming refund, by calling for proof of remittance in the form of communication from the concerned tax deducting authority or the concerned bank with regard to the remittance of the TDS amount. Only on verification and satisfaction, the assessing officer can give credit in the computation of tax and, thereafter, any excess tax lying in credit, could be refunded to the assessee by the assessing officer by passing an order of refund in favour of the assessee.

118. Upon such an order being passed by the income tax officer/assessing officer granting refund, the refund order is despatched to the assessee to the address that is given in the income tax return filed by the assessee. In this regard, the despatch clerks are bound to enter the details of the refund order, including the address to which the said refund order has been sent in the dispatch register maintained by the department and to despatch the same through registered post with acknowledgment due. The address in the registered post should tally with the address in the dispatch register.

119. From the above, it is amply clear that the system that has been put in place and being followed by the income tax department, time immemorial, is not only a clear system, but also a fool-proof system of identifying the whole sequence of events culminating in the passing of the refund order. There is total transparency in the system so that no unjust enrichment is

meted out to any assessee to the detriment of the exchequer. It is to be reiterated that without verification and satisfaction as to the deduction of the tax at source and its deposit to the credit of the assessee, it is not open to the income tax officer/assessing officer to order any refund, as the amount, that is to be ordered as refund, is an amount that accrues to the assessee only on completion of the deduction of the tax at source by the concerned authority and deposit of the amount into the coffers of the Treasury as the Department is only a repository/custodian of the amount received.

120. In the above backdrop, the rest of the three appellants/accused, who are A-2 to A-4, their involvement in the offence should be looked into to find out whether the prosecution has established its case relating to the above three accused beyond doubt. Of the three persons, A-2 is the income tax officer and the other two accused, viz., A-3 and A-4 are the despatch clerks. In the above factual matrix, A-2 is the pivotal person, who is entrusted with the task of verifying and satisfying himself as to the claim made by an assessee before granting an order of refund and A-3 and A-4 are mere instrumentalities in despatching the orders of refund to the concerned assessee. In this backdrop, this Court now proposes to analyse the evidence as against the instrumentalities, viz., A-3 and A-4 before proceeding to analyse the evidence as against A-2.

A-3 & A-4

(LOWER DIVISION CLERKS - DISPATCH CLERKS)

ISSUE NO.6 :

Whether the prosecution has proved the case as against A-3 and A-4 through infallible evidence.

121. The main allegation levelled by the prosecution against A-3 and A-4 is that they are the last but one link in the conspiracy, in that, they had diverted the refund orders, which were illegally passed by A-2 to an address, which is not the address as shown in the income tax returns of the respective assessee; that all the refund orders have been sent to two particular addresses at Erode and that the entries made in the dispatch register does not tally with the entries made in the special journal for registration maintained by the postal department.

122. Be it noted, as stated supra, A-4, pending appeal died on 15.2.2020 and a memo to the said effect has been filed before this Court, which has been taken on record and, in the above

circumstances, though the appeal in CrI.A. No.374/08 filed by A-4 stands abated, however, to find out the complicity of A-3 in the offence, it is but necessary to look into the evidence as against A-3 and A-4 as a whole and, therefore, the evidence is surfed through by this Court even as against A-4, but only for the limited purpose of arriving at a finding as to the complicity of A-3 in the crime.

123. Refuting the allegation raised by the prosecution, it is the stand of A-3 that his duty is only to despatch the refund orders to the address mentioned in income tax returns through registered post and following the said guideline, after entering the address to which the refund order is dispatched in the dispatch register, the refund orders were despatched. Therefore, without examining the postman, who is said to have delivered the letters/returned the letters on the premise that no such person is available in the said address, the allegation of the prosecution that the letters have been dispatched to a different address, is wholly unsustainable merely on the basis of the evidence of P.W.s 1 and 2 coupled with the evidence of the postal authorities and in the absence of examining the postmen as to the availability of the person at the said address, rendering a finding as to the culpability of A-3 in the offence is per se impermissible.

124. P.W.1, in his evidence, has deposed that A-1 used to collect the refund orders from A-3 and A-4 for which A-3 and A-4 got themselves enriched from the pocket of A-1, through the ill-gotten money. The above evidence of P.W.1 has also been corroborated by the evidence of P.W.2, and P.W.2 has further went on to depose that the refund orders were sent either to one of the two addresses at Erode, viz., No.37, Park Road, Erode or to No.7, Kanthasamy Street, Erode. It is seen from the records that the above addresses are not the addresses of A-5 to A-8, nor is it the address of any of the assessee, be it fictitious assessee.

125. It is the evidence of P.W.37, both in chief and in cross, that the refund orders are to be sent to the address as found in the file and that the dispatch clerk has no authority to send it to an address different from that of the one found in the file. In the backdrop of the above evidence, the deposition of P.W.37, who was a lower division clerk, like A-3 and A-4 at the relevant point of time, assumes significance.

126. P.W.37 has deposed that Ex.P-1221 is the dispatch register and Ex.P-1231 is the Special Journal Register maintained with the postal authorities, pertaining to the period

in question. Exs.P-1221 and P-1231 show the refund orders that were dispatched to the various assessees during the above period. It is the further deposition of P.W.37 that the address, as found in the file, to which the refund orders are to be sent, should be entered in the dispatch register as also the Special Journal Register maintained with the postal authorities.

127. It is the deposition of P.W.37 that S. No.20 in Ex.P-1221, the dispatch register, pertains to the refund order that is said to have been dispatched by A-3 to one of the assessee by name M.S.Duraisamy at Chennimalai. However, in Ex.P-1231, the Special Journal Register, for the very same assessee, the address of dispatch is shown as Erode instead of Chennimalai. P.W.37 has further deposed that the full address has not been written in both Exs.P-1221 and P-1231. Similarly, P.W.37 has further deposed that Ex.P-1027, is a confirmation letter alleged to have been sent to the Executive Engineer, Rural Roads Development, Mandiya Sector, Mysore with regard to the TDS certificate, however, the said detail does not find place in Ex.P-957, the assessment records pertaining to the said M.S.Duraisamy. P.W.37 has categorically deposed that the above transaction entries in all the registers have been written by A-3. Similar is the deposition of P.W.37 with regard to the other assessees, viz., Balasubramanian, Chinnasamy, Thangavelu, Balakrishnan and Ramasamy. However, the entries in Ex.SP-1221 and P-1231 with regard to corroborative address in both the ledgers do not match and that the address which is reflected in the Special Journal Register is that of Erode. From the above deposition of P.W.37, it is unambiguously clear that the dispatches, though have been made to the address at Erode, however, entries have been made in the disptach register showing the address as the one found in the file, which does not correspond to the address as reflected in the Special Journal Register. It is the unequivocal submission of P.W.37 that the said entries have been made by A-3 and A-4.

128. The other aspect, which strengthens the prosecution version is that P.W.37 has deposed that the dispatch register, Ex.P-1221 reveals that though a refund order is shown to have been disptached to Vellai Koil Road, Sivagiri, which is in the handwriting of A-3, as is reflected in the dispatch register, however, curiously, in the Special Journal Register, the word Sivagiri has been struck off and has been over written with the word Erode in the handwriting of A-3. Similarly, in another refund order, running to the tune of Rs.61,257/-, alleged to have been sent to Arasalur on 12.6.87, as is reflected in the dispatch register, however, the Special Journal Register reveals that the word Arasalur has been corrected as Erode, which is

also in the handwriting of A-3. Further, the acknowledgment card relating to the said dispatch also shows that the place where the refund order was delivered was Erode, as is evident from the postal stamp as is appearing in the acknowledgment card. In a similar case, A-4 has dispatched a refund order to one Ramasamy at Kodikattu Valasu, as reflected in the dispatch register, but actually, the said refund order has been sent to an address at Erode, as is revealed by the Special Journal Register.

129. From the above materials coupled with the fact that Ex.P-1294 was returned with an endorsement 'No such addressee', this Court is at a loss to understand as to how the refund order sent by the department could have been received by the said assessee, when the registered letter sent by the investigative agency returned with the above endorsement. In this regard, there is no rebuttal on the part of A-3 and A-4. The overall evidence, as narrated above, therefore, clearly speak volumes about the clandestine acts of A-3 and A-4 in the commission of the offence which stands clearly established by the prosecution.

130. Further, it is to be pointed out that there has been no rebuttal on the part of A-3 and A-4 to the evidence placed before the court below by the prosecution at the time of trial. A-3 and A-4 have been charged under the Prevention of Corruption Act and once the prosecution has placed evidence, which points a finger on A-3 and A-4, it was incumbent on A-3 and A-4 to rebut the presumption as projected by the prosecution. A-3 and A-4, to rebut the presumption, ought to have pointed out infirmities in the evidence of P.W.37 vis-a-vis the Dispatch Register and the Special Journal Register to disprove the theory spelt out by the prosecution. A-3 and A-4 have not only miserably failed to rebut the presumption, but inspite of lengthy cross examination, no worthwhile contradiction has been elicited from the evidence of P.W.37, which would shake the prosecution version as against A-3 and A-4 and failing to rebut the presumption, this Court is of the considered view that the materials available on record unerringly point a finger against A-3 and A-4 in the crime and the theory projected by the prosecution deserves to be accepted as against A-3 and A-4 as well.

A-2
(INCOME TAX OFFICER)

131. A-2 is the person, who is pivotal to the whole issue, who is the person, who had issued the refund orders, which were obtained fraudulently by A-1 with the connivance of P.W.s 1 and 2. A-2, as the income tax officer, is a person, who is supposed to act on the basis of the documents filed before him and decide

on the legality and genuinty of the same and, thereafter, satisfying himself, pass the order accepting the return and ordering refund, if there be any. Therefore, the first and foremost task of the income tax officer is to browse through the documents placed before him and arrive at a subjective satisfaction as to its legality and genuineness and, thereafter, sanction refund. In this scenario, this Court is ordained with the task of finding out whether A-2, the income tax officer, has discharged his duties, in the manner known to law by finding out whether all necessary precautions have been taken by A-2 and that A-2 has satisfied himself as to the legality and genuineness of the documents placed before him along with the income tax returns before passing the order of refund in favour of the assessee or that the act of A-2 in ordering the refund is by not following the rules and regulations as prescribed under the various rules and regulations of the income tax department and manifestly reveals an approach unbecoming of an income tax officer, which is to the detriment of the exchequer.

132. Further, this Court, to arrive at an affirmative answer to the above against A-2, the whole prosecution theory has to be analysed on the touchstone of the evidence both oral, documentary and circumstantial, to find out whether the prosecution has proved the charge of conspiracy, as the whole prosecution web is intrinsically and intricately connected with the theory of conspiracy. Non-establishment of the theory of conspiracy would render the whole prosecution a futile exercise, not only against A-2, but the other appellants as well; however, on the contrary, if this Court finds that the theory of conspiracy, as projected by the prosecution stands established, as against A-2, even through circumstantial evidence, the nexus of all the conspirators in the crime would fall in place like a stack of chips from which there would be no turning back for any of the accused.

133. As already discussed above, the crime as against A-1 and A-5 to A-8 stands irrevocably established even insofar as conspiracy among them is concerned. Further, the crime, insofar as A-3 and A-4 also stands established from the materials pointed out above. The duty of this Court, at the present point, is only to find out whether the prosecution has established the larger conspiracy of A-2 in the said crime, as without the participation of A-2, the conspiracy, as against the other accused would wither away like a ton of mist in the cloudy sky. Therefore, this Court is proceeding to analyse issue Nos. 3 to 5 to arrive at a finding as to the culpability of A-2 in the crime.

ISSUE NO.3 :

Whether the nexus and culpability of A-2 in the conspiracy has been proved by the prosecution. (Loganathan Case)

ISSUE NO.4 :

Whether the act of A-2 in ordering refund of the amounts inspite of the letter of the TDS certificate issuing authority proves the culpability of A-2 in the crime.

ISSUE NO.5 :

Whether the stand of A-2 that detailed scrutiny is not required in summary assessment for order of refund is legally sustainable.

134. The first and foremost argument advanced on behalf of A-2 is that the assessment itself, being summary in nature, the duty of A-2 is to just check the returns, processed and placed before him, by his subordinates and on satisfaction as to the availability of the requisite documents, shall pass orders. It is the submission of the learned counsel for A-2 that his subordinates, having scrutinised the documents and satisfied themselves as to its admissibility, have placed the papers before him for orders and A-2, on appreciation of the materials and on satisfaction on scrutiny and necessary verification, has passed the orders of refund and that in case of summary assessment, it is not necessary for A-2 to conduct any roving enquiry and, therefore, the charge made as against A-2 relating to grant of pecuniary advantage is not supported by materials available on record.

135. Summary Assessment is contemplated u/s 143 of the Income Tax Act in relation to a return filed u/s 139 of the Income Tax Act. In the case on hand, the income tax return is alleged to have been filed for a period of three years and the assessment is summary in nature. It is not in dispute that insofar as the summary assessment is concerned, the returns are scrutinised by the subordinates of A-2 and subject to the return fulfilling all the requisite criteria, the same is placed before A-2 for further orders. Accordingly, the returns have been scrutinised by the subordinates of A-2 and all the requisite documents being available along with the return, the files were placed before A-2 for further orders.

136. Even the prosecution has no quarrel on the issue of the assessment being summary in nature. But one of the allegation against A-2 is that he has not performed his duty as is contemplated under the Income Tax Act, though it is countered by the learned counsel for A-2 submitting that A-2 had taken all

necessary measures as is required of him under the Act before passing the orders of refund.

137. The Income Tax Act has built in mechanism to find out as to the remittance of tax on the income earned by an assessee. The mechanism for the same are exhaustive and takes within its fold the very many scenarios that may emerge and provides a safeguard against any malpractice that may be practiced in claiming refund of any amount, which actually has not been paid. However, it is not out of context to note here that even such an exhaustive procedure has certain inherent fallacies, which have been used time and again by unscrupulous elements to siphon off money from the coffers of the income tax department, one of which is before this Court. A perusal of the relevant provisions of law as it stood then relating to assessment of tax and refund, if any, being ordered, on deduction of tax at source, it is clear that the income tax officer is clothed with power to call upon the assessee to submit the necessary proof with regard to deduction and remittance of the said amount in the bank by the employer for which the certificate has been issued by the competent authority, as proof to substantiate that the certificate is not only a genuine document, but equally, to show that the amount has come into the coffers of the Treasury, as the department is only a repository of the money received and is in no way a banker to pay the assessee, insofar as the claims as made by the assessee through the submission of TDS certificates, which stands not established as to its genuineness and authenticity. Unlike the Permanent Account Number, which is an unique number in the current day scenario for identifying not only the assessee, but also the payments made by the assessee with regard to his tax liability, equally GIR Number was assigned preceding the introduction of PAN number, which too was unique in character with reference to identifying the assessee and also speaking about the tax paid by the assessee on the income earned by him during the relevant financial year.

138. True it is that in the case on hand, the assessments are summary assessments, but, crucially, in all the returns filed, which have been filed for a period of three years, TDS certificates have been produced/annexed as documents with the respective returns claiming refund of the amount deducted at source. The subordinates of A-2, in adherence to their work, have scanned through the materials and found that the returns have been filed with the necessary documents in support of the claim and, therefore, they have processed the same and placed it before A-2 for further orders.

139. Further, the materials reveal that A-2 had written to some of the certificate issuing authorities with regard to the authenticity of the TDS Certificates. Even according to A-2, there was no response in some of the cases and in some of the cases, A-2 did not entertain any doubt. Leaving aside the cases in which A-2 did not entertain any doubt for the time being, in cases where A-2 had some iota of doubt as to the authenticity of the documents, A-2 had written to the concerned authorities, who had issued the certificates, and there being no information forthcoming, A-2 had issued the orders of refund. As already stated, the amount, if any, deducted at source, standing to the credit of the assessee, is only held by the department as a repository and it is not a banker to issue refund orders without verifying about the authenticity of the deduction and deposit thereof. If really no intimation was forthcoming from the concerned authority, who is said to have deducted the tax at source, it was incumbent on the part of A-2 to have called upon the assessee under the relevant provisions of the Income Tax Act to produce necessary documents in support of the plea of deduction of tax as also the deposit of the same to the credit of the assessee in the bank. However, curiously, A-2 kept silent after merely writing to the authorities in cases, where he is alleged to have entertained certain doubts and without getting the necessary confirmation, has ordered the refunds.

140. Be that as it may. In this regard, whether can A-2 merely walk away scot free stating that he had written to the concerned authorities and there being no response, had processed the refund orders and that he cannot be found fault with. It is to be pointed out at this juncture that the income tax department is not a banker, which is holding the money deducted as tax at source from any person. The income tax department is just a repository for the amount collected as tax, which is due to the Government and only in the event of deduction of tax at source, which an assessee is not liable to pay, the amount, that is in the custody of the income tax department, which is not liable to be deducted as per law, the same could be refunded back to the concerned assessee as refund of the claim.

141. In the case on hand, even according to A-2, with regard to the certificates where A-2 entertained a doubt, A-2 had written to the concerned authorities, who have issued the said certificates to authenticate the said certificate. Once A-2 entertains a doubt with regard to the authenticity of the certificates, it is incumbent on A-2 to hold the assessment pending receipt of the confirmation letter from the concerned authorities. However, a perusal of the records reveal that A-2 had cleared the returns even without receipt of confirmation

letter. The only defence taken by A-2 in this regard is that the assessment cannot be put on hold in view of the circular issued by the CBDT, as any assessment, which is kept pending without being finalised beyond a particular period of time, where refund is claimed, such of the amount claimed as refund would attract interest at 12% p.a., and only to safeguard the revenue loss to the exchequer, the refund orders have been issued.

142. The above defence of A-2 is not only funny, but also a hypocritic approach adopted by A-2 to siphon off the funds from the exchequer, even though no such amount, as claimed, has come into the coffers of the Government towards deduction, alleged to have been deducted at source by the various governmental authorities.

143. It is to be pointed out at this juncture, that irrespective of the assessment, being summary or scrutiny in nature, it is the duty of the authority, assessing such returns, to satisfy itself before approving/finalising the return. The income tax officer is endowed with the duty of safeguarding the interest of the exchequer and the authority is only a custodian of the tax collected in accordance with law from and out of the income earned by the individual and any amount towards refund, which is to go out of the coffers, as refund, should be effected only after following the necessary provisions and guidelines issued by the department from time to time and the officer cannot, at his whims and fancies, disburse amounts, without getting any approval as to the deduction of tax at source from the amounts paid to the assessee. Though it is claimed by A-2 that in order to protect the Revenue from paying interest on the amount, that is claimed for refund, the said amount was refunded, the said stand of A-2 is nothing but a synthetic contention to absolve himself of the crime, by citing a CBDT circular.

144. In the above backdrop, one such instance projected by the prosecution relating to fraudulent issuance of refund, which is very much within the knowledge of A-2 is a refund order issued in favour of one Loganathan.

145. Relating to the said instance, P.W.s 1 has categorically deposed that A-2 was in receipt of a letter stating that TDS in the name of Loganathan is a forged one and pursuant to receipt of the said letter, A-2 had telephoned A-1, whereupon, A-1 went to the office of A-2. On return A-1 had vented his ire on P.W.1 for having affixed insufficient stamps in the said letter, which entailed its return back to the hands

of A-2. Thereupon, A-1 prepared another letter and P.W.1, in that transaction aided A-1 in preparing a seal in the name of 'Noyyal Reservoir Project, Kangeyam'. Thereafter, a letter was forged in the capacity of the Chief Engineer, Noyyal Reservoir Project, Kangeyam, which was dispatched to A-2 and thereafter, refund order in the name of Loganathan was issued. The above evidence of P.W.1 has been corroborated by P.W.2 on all material aspects.

146. However, in this instant case, it is the submission of the learned counsel appearing for A-2 that A-2 had addressed a letter for finding out the authenticity of the TDS Certificate and had kept the assessment in abeyance for almost a year and, thereafter, as no confirmation was forthcoming, due to the fact that belated assessments carry interest @ 12%, the refund was processed and order for refund was issued.

147. In this regard, a perusal of the deposition of P.W.52 reveals that there is no office of Chief Engineer at Kangeyam and the office of Chief Engineer is only available at Chennai. First of all, as an income tax officer, who caters to the particular circle, it is incumbent upon A-2 to know the hierarchial position of the authorities in the various government departments and it is to be stressed that A-2 is not a menial in the office of the income tax department, but a gazetted officer. Therefore, it would not be open for A-2 to plead that he is not aware of the various hierarchial positions in the various departments of the government and even if that is the case, it is incumbent upon A-2 to have checked the letter, alleged to have been written by the Chief Engineer as the said authority, would in no way be writing letters to the income tax department for the purpose of the TDS certificates issued by his subordinates.

148. Coming to the assessment proper, it is the case of the prosecution, which is also not in dispute, that a telegram, Ex.P-813, was addressed to A-2, which was received by A-2 on 31.3.87 informing the income tax department that the TDS Certificate, the authenticity of which was sought to be clarified by A-2, has not been issued to S.Loganathan, contractor, and is a forged one and further mention is made that a separate letter has been addressed and a request was made to the income tax department not to order any refund. This telegram was addressed only to A-2 the receipt of which is spoken to by P.W.7. The letter, Ex.P-1192, which finds mention in the telegram, dated 1.4.87, written by P.W.32, the Executive Engineer, Noyyal Reservoir Scheme, was in fact received by A-2, who had placed his initials on the letter and this fact is also

spoken to by P.W.4. It is further evidenced not only from the letter, Ex.P-1192, but also from the deposition of witnesses that A-2 has made an endorsement in Ex.P-1192 to the effect "No times, await", but subsequent to the said endorsement, A-2 has not taken any steps. It is further evident from the deposition of P.W.7 that the file relating to Loganathan was retained by A-2 himself.

149. Be that as it may. The evidence available on record reveals that the said Loganathan did not turn up inspite of communications addressed to him, as evident from the deposition of P.W.32. Further, the letter, Ex.-814, addressed by the income tax department to the said Loganathan was returned. P.W.17, a person equivalent in rank as that of A-2, was examined, who has spoken about the steps that ought to have been taken by A-2 on receipt of the telegram, notifying the TDS certificate issued by the concerned authority as a forged one. However, curiously, not only A-2 retained the file, as is evident from the deposition of the various witnesses for over a year, but more importantly, A-2, as a responsible officer, has not taken any steps to make any complaint with the law enforcing body with regard to the forged TDS certificate. The act of A-2 in not taking any steps with regard to the forged TDS certificate, brought to his notice through the communication addressed by the Executive Engineer in the form of telegram, Ex.P-814 and also the subsequent letter, Ex.P-1192, not only shows the callous attitude on the part of A-2 in handling the problem, but is also unbecoming of an officer to have kept silent to a penal act, which would have detrimental effect on the exchequer. Much could be said of the act of A-2, but prudence warrants this court to stop short of amplifying anything further.

150. A-2, for the purpose of ordering the refund, as stated above, has merely resorted to refugee under a circular issued by the CBDT relating to payment of interest @ 12% p.a. for belated finalisation of assessment. The purpose and intent of the CBDT circular is only for the purpose of keeping the assessing officer abreast on their toes by not unnecessarily and unduly prolonging any assessment, without any valid reason. Where a valid reason, such as the one in the present case, is available, the CBDT circular would have no bearing, as ordering refund, where refund is not justified as per law, would be nothing but causing a loss to the exchequer. The assessing officer, with open eyes, had approved the return, knowing fully well that the authenticity of the document was still a subject matter of speculation and had not been authenticated by the appropriate authority, who had issued the said certificate. In such a

scenario, prudence warrants the assessing officer to call upon the assessee to place materials as to the deduction of tax at source by filing necessary receipt as to the deposit of the said amount in the bank. In the case on hand, as spoken to by P.W.32, communication was addressed to the assessee, Loganathan, but the same was returned. In such a scenario, when the assessee had not come forward to place materials to authenticate the certificate annexed by him along with his return, the assessing officer cannot take refuge under the CBDT circular and ordered refund, as the said circular, as stated above, is only for the purpose of keeping the assessing officer to discharge their work diligently and within the time frame. However, in the present case, the authenticity of the document, which was annexed with the return itself being in question, CBDT circular would in no way stand in the way of the assessing officer to hold the finalisation of the return till the said certificate is validated in accordance with law. However, for reasons best known to A-2, merely citing a CBDT circular, the assessing officer has ordered the refund.

151. From the above act of A-2, it is crystal clear that A-2 was well aware of the fact that the TDS certificate, which has been annexed with the return filed in the name of S.Loganathan is a forged one and as stated above, A-2 took no steps with regard to the said act. It is the deposition of P.W.20, who was an Inspector at the relevant point of time and working below A-2, has categorically deposed that A-2 had made a note in the TDS certificate filed along with the assessment of Loganathan as to its authenticity and had directed for enquiry with regard to the said certificate. P.W.20 has further deposed that it was A-2 who had given the file to him and P.W.20 has further deposed that at the time of giving the file to P.W.20, A-2 had asked P.W.20 to enquire with regard to the authenticity of the said TDS certificate from A-1 rather than from the Executive Engineer, Noyyal Reservoir Scheme, stating that the said Loganathan and the Executive Engineer were not in good terms and, therefore, asked P.W.20 to verify its authenticity with A-1.

152. Pausing here for a moment, it is to be noted that noting has been made by A-2 in the file pertaining to Loganathan for verifying the authenticity of the TDS certificate. However, curiously it is the deposition of P.W.20 that A-2 asked him to enquire with regard to the authenticity of the said TDS certificate from A-1 rather than from the Executive Engineer, Noyyal Reservoir Scheme, stating that the said Loganathan and the Executive Engineer were not in good terms. The act of A-2, in the considered opinion of this Court is nothing but wanting to have the cake and eat it too. Further, this proves one other

fact clinchingly, in that A-2 knew A-1 personally. It further proves the fact that since the return related to income tax, A-1 must have been a person dealing with income tax and, in all probability, would have been an income tax practitioner. The nexus between A-2 and A-1 stands proved from the very mouth of A-2.

153. Further, it is to be remembered at this juncture that the telegram, Ex.P-814 was the igniting point in the whole transaction, which led to the verification process being initiated. In this regard, at the risk of repetition, it is to be stated that the deposition of P.W.1 that A-1 received a call from A-2 and upon returning after meeting A-2, A-1 scolded P.W.1 for the insufficient stamps affixed in the letter. If really the contention raised on behalf of A-2 is to be accepted, relating to granting the refund order on the ground that belated assessment will entail payment of interest on the refund, the course that was open for verification of the said TDS certificate was only with the authority, which issued the certificate and definitely not with A-1. The act of A-2 in asking P.W.20 to meet A-1 and converse with him with regard to the said TDS certificate not only speaks volumes about the complicity of A-2, but also is unbecoming of an officer in the rank of A-2. One more fact that stares at the face of A-2 is the fact that while A-2 asked P.W.20 to verify the authenticity of the TDS certificate with A-1, has further stated to P.W.20 that the said assessee, Loganathan was not in good terms with the Executive Engineer, Noyyal Reservoir Scheme and, therefore, in all probability would not be giving a positive verification about the TDS certificate. First of all, this Court is at a loss to understand as to how the assessee Loganathan was known to A-2 and if really the said Loganathan was very well known to A-2 as evident from the statement made by A-2 to P.W.20, nothing prevented A-2 from calling upon the said Loganathan and enquiring with him and calling upon proof for recovery of TDS from the payment made to him. However, for reasons best known to him, A-2 has not done the very thing, as noted above, but had only asked P.W.20 to verify the authenticity of the document from A-1, which clearly goes to show that the approach adopted by A-2 not only being unprudent, but equally smacks with mala fide intent. A-2 not having done the most prudent thing, as noted above, only leads this Court to the inference that the telegram, Ex.P-814, addressed to A-2, which has triggered the whole scheme, was sought to be given a quietus by A-2 in asking P.W.20 to meet to A-1 and have the authenticity of the certificate verified rather than from the officer, who had issued the said certificate, as such a course would have definitely blown the whole scheme hatched by A-1 to smithereens.

Further, this Court is at a loss to understand as to how A-1 would be in a position to validate the certificate and speak about its authenticity, if not for the fact that the creator of the said certificate is A-1. It is also evident from the materials available on record, more especially, the depositions of P.W.s 4,5, 7, 15, 17 to 20, 47, 53 and 54 that not only A-2 had not followed the procedure as contemplated under the rules governing the refund, but has also gone out of the way by asking P.W.20 to enquire with A-1 about the authenticity of the certificate rather than with the authority who had issued the certificate. The said finding of this Court is further bolstered by the fact that inspite of lengthy cross examination on behalf of A-2, the defence could neither elicit any contradiction in the evidence of P.W.20 in favour of A-2 nor breach the evidence to the benefit of A-2. Similarly, the evidence of the other witnesses have also unerringly pointed a finger as against A-2 with regard to his deficient act in approving the refund inspite of A-2 being put on notice by the certificate issuing authority as to the fraudulent nature of the said certificate.

154. One other aspect that needs to be remembered is that inspite of being put on notice about the forged nature of the TDS certificate, A-2 acted on the said assessments later in point of time and had sanctioned the refund orders. In this backdrop, it is revealed from Exs.P-810 to 812, 815 and 819 that a sum of Rs.62,600/- and Rs.22,992/= were sanctioned as refund in favour of Loganathan. As already pointed out, while discussing the complicity of A-3 and A-4, this Court had held that the refund orders were sent to certain addresses in Erode, though the addresses shown in the return were different. In the case of Loganathan as well, the refund orders were sent to the address at Kandasamy Street, Erode, whereas the address found in the return is Sangalipalayam, Uthukuli, Erode RMS. In this regard, the evidence of P.W.3 categorically reveals that no PWD contractors had ever resided in the said address and that no refund orders have also been received at the said address.

155. This Court, reverting back to the act of A-2, is at a loss to understand as to what prompted A-2 to pass the refund orders inspite of the fact that telegram and letter were written to A-2 about the forged nature of the TDS certificates. It is nowhere the case of the defence that A-2, after ascertaining the veracity and authenticity of the TDS certificate issued in favour of Loganathan, had passed the refund orders, but it is only the case of the A-2 that in view of the circular issued by CBDT that the assessments should not be held for over a year as the same would attract penal interest, had issued the refund

orders. The above defence of A-2 also pales into insignificance in view of the deposition of P.W.5, who has categorically deposed that the Commissioner of Income Tax had issued instructions to take indemnity bond in cases of suspicious nature before issuing refund order. Had A-2 taken such an indemnity bond, as directed by the Commissioner of Income Tax, then the stand of A-2 would have been an acceptable one, if not a foolproof one. But the act of A-2 in issuing the refund orders, notwithstanding the fact that the TDS certificates have been stated to have been forged and further the same having not been verified and certified to be authentic and also the further act of A-2 in not taking any indemnity bond from Loganathan, though A-2 himself has stated about his knowing the said Loganathan to P.W.20, in consonance with the directions issued by the Commissioner of Income Tax, only goes to show that A-2 had not only committed acts unbecoming of an officer of a high stature, but the evidence unequivocally goes to prove that A-2 had equally involved himself in the conspiracy to gain pecuniary advantage not only for the other appellants, but equally to enrich himself through the acts of the other appellants by adopting illegal means.

ISSUE - 1 : CONSPIRACY - SECTION 120 (B) IPC :

Whether the prosecution has established the charge u/s Section 120 (B) IPC.

156. The entire prosecution theory rests on the conspiracy alleged to have been hatched between the appellants and in pursuance of the said conspiracy, they colluded and acted in a manner prejudicial to the interests of the exchequer and had caused financial loss to the tune of Rs.19 Lakhs and thereabouts and, thereby, a pecuniary gain to the appellants.

157. Conspiracy consists of an agreement or a combination between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or a criminal act or to do a lawful act by unlawful means. The agreement may be express or implied, or in part express and in part implied. Therefore, for an offence to fall under this section, bare engagement and association to break the law is the requirement and the methods employed should be illegal. However, the onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.

158. The Hon'ble Supreme Court in V.C. Shukla - Vs - State (Delhi Admn.) (1980 (2) SCC 665 : 1980 SCC (Cri) 561), held as under :-

"8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120-B of the Penal Code, 1860, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

(Emphasis Supplied)

159. From the ratio laid down above, it is emphatically clear that to bring home a charge u/s 120 (B) IPC, it is necessary for the prosecution to show, either through direct or circumstantial evidence, that there was an agreement between two or more persons to commit an offence. In other words, there was meeting of minds between the conspirators to commit the offence. It is the case of the prosecution that pursuant to the conspiracy, A-1, with the aid of P.W.s 1 and 2, and with the connivance and help of A-2 to A-4, to derive pecuniary advantage, with the cooperation and assistance of A-5 to A-8, committed the offences with a view to cause loss to the exchequer. Further, in the said process, A-2 to A-4 were the recipients of tainted money, which was gained through illegal means, thus attracting the provisions of the Prevention of Corruption Act against all the accused/appellants. The necessary ingredient in the present case is the meeting of minds between the conspirators, and this Court has to find out from the materials available on record as to whether the prosecution has proved the same.

160. Generally a finding as to the association of the different persons in the conspiracy, could not always be established through documentary evidence and the court has to seive through the circumstances to find evidence, which point to the conspiracy. Many a times, the conspiracy stands established on the basis of circumstantial evidence and the act of the different appellants in the said conspiracy unfolds only when evidence pertaining to their act in the overall scheme of crime is analysed.

161. This Court has already held that the conspiracy between A-1, P.W.s 1 and 2 and A-5 to A-8 speak for themselves from the materials available on record. This Court has also discussed the evidence threadbare to arrive at a subjective finding that the prosecution has established the conspiracy between all the accused, including A-2 to A-4. The conspiracy part with A-2 is the main link with the other members of the conspiratorial group, which this Court has analysed and held to be in existence. However, to strengthen that A-2 is also a part of the conspiracy, one other important piece of evidence that throws more light is the fact that the assessments being individual assessments and not filed through any income tax practitioner. Yet, insofar as the TDS certificate relating to Loganathan, A-2 had asked P.W.20 to enquire about the authenticity of the said document with A-1 rather than with the Executive Engineer, Noyyal Reservoir Project, who is the issuing authority. There is no rebuttal from A-2 as to how he know that A-1 had any knowledge about the said Loganathan, leave alone the certificate. This instance emphatically strengthens the theory of conspiracy of A-2 with the other appellants and in furtherance of the said conspiracy, the above illegal acts have been committed.

162. As discussed above, from a qualitative as well as the quantitative assessments of all the materials available on record, this Court is of the considered view that the prosecution has tabled materials, which intrinsically establish that there exists circumstances, which unerringly point to the conspiracy entered into between the various appellants. It is clear from the said evidence, which have been analysed threadbare above, that the appellants have conspired to gain a pecuniary advantage and enrich themselves to the detriment of the exchequer. The prosecution, though not through direct evidence, but definitely and positively through circumstantial evidence, have clinchingly proved that the appellants have had clear meeting of minds and have, thereby, conspired to gain pecuniary advantage and this Court is led to the irresistible conclusion that there has been an agreement between two or more persons, viz., the appellants to commit the offence. Thus, on a cumulative analysis of the evidence, this Court is of the categoric opinion that the charge u/s 120 (B) IPC, which is the pivot around which the entire prosecution rests, has been conclusively proved by the prosecution through proper circumstantial evidence and the appellants have not placed any materials to rebut the said evidence and, therefore, the materials placed by the prosecution intrinsically connect the act of the appellants in the conspiracy theory and, therefore,

this Court is of the considered opinion that the charge against all the appellants u/s 120 (B) has been established beyond cavil.

ISSUE NO. 10

Whether the prosecution has proved its case that the returns have been filed in the name of bogus/fictitious persons.

163. One of the main plank of the case of the prosecution is that the the returns have been filed either in the name of bogus or in the name of fictitious persons and, therefore, this act of the appellants clearly show that the appellants wanted to derive pecuniary advantage and cause wrongful loss to the Government.

164. However, this contention of the prosecution is countered by the defence stating that the returns filed are not bogus/fictitious as claimed by the prosecution and in this regard, reliance has been placed on Exs.D-1 to D-8 to drive home the point that action has been taken against the assessee mentioned in the said exhibits and, in fact, on orders having been passed, fine amounts, so imposed, have also been paid.

165. It is seen from the materials available on record that returns have been filed in the names of persons, who are appellants in this case, viz., A-5 to A-8. It is also evident from the records that returns have been filed in the names of other persons, which, according to the prosecution, are fictitious entities, who are not in existence and they have been created for the purpose of filing the returns and gaining wrongful refunds.

166. On the point of income tax returns, which have been filed in the names of the appellants, viz., A-5 to A-8, the prosecution claims that they are bogus returns, as A-5 to A-8 are not PWD contractors, as is evident from the deposition of the house owners, viz., P.W.s 6, 9, 10, 42 and 43, who have categorically deposed that their houses were never under the occupation of any PWD contractors. It is to be pointed out at this juncture that the defence has not confronted them with A-5 to A-8 to prove that they were, in fact, occupying the said premises, even they be not PWD contractors. However, the defence has not established that A-5 to A-8 were in occupation of the premises owned by P.W.s 6, 9, 10, 42 and 43. In this regard, a perusal of the materials reveal that false income tax returns were allegedly filed in the name of A-8, showing the address as Vedagam Thottam, Arasalur. P.W.1, in his evidence

has deposed that Exs.P-534 and P-535 relates to the postal acknowledgment cards relating to the said returns in the name of A-8 and in fact it was P.W.1 who signed the postal acknowledgment cards, wherein the seals of the post office at Karungalpalayam, Erode, is prominently displayed. In this backdrop, a careful perusal of the acknowledgment cards, Exs.P-534 and P-535 reveals that though the address as is shown is that of Arasalur, however, the postal seal is that of Karungalpalayam, Erode. Had the letter been dispatched to Arasalur, as is claimed by A-3 and A-4, then, in the fitness of things, there should have been a redirection of the letter from Arasalur to Karungalpalayam, at the instance of A-8, which is nowhere found in Exs.P-534 and P-535. Therefore, this clearly shows that the letter was not dispatched by A-3 to the address at Arasalur, as is reflected in the file, but to the other address at Erode, which was the only reason that the seal of Karungalpalayam, Erode, got affixed in the acknowledgment cards.

167. Insofar as the other returns, which according to the prosecution, are fictitious, it is the stand of the defence that fines were imposed, which have been paid and, therefore, the said returns cannot be termed to be fictitious. Though such a contention is placed, it is to be pointed out that even those cases, the refunds orders have been dispatched to the address at Erode and not to the address as is shown in the return, which is also evident from the entries made in the dispatch register and the Special Journal Register. Mere payment of fine would not make a return filed as not fictitious. The prosecution has proved through cogent and convincing evidence that the refund orders were collected either by P.W.s 1 and 2 or by A-1 and they were encashed through A-5 to A-8 and P.W.s 1 and 2. As pointed out in the analysis of the complicity of A-1, the handwriting expert has categorically spoken that the handwriting found in the returns filed in the names of the fictitious persons are that of P.W.s 1 and 2 and the handwriting in the TDS certificates enclosed along with the said returns tallies with that of A-1, which clearly and unequivocally proves the fictitious nature of the persons, who are name assigned entities for the purpose of filing the returns. Even the refunds issued in their names have been encashed by P.W.s 1 and 2 and A-5 to A-8 through the various bank accounts opened by them, which has been spoken to by the bank officials, viz., P.W.s 8, 11 to 14, 16, 22, 25, 26, 28, 30, 33 to 35, 39, 46 & 56. The handwriting in the forms for opening the bank account has been clearly established to be that of P.W.s 1 and 2 and that very many refund orders have been encashed through A-5 and A-8, which stands unrebutted. Therefore, the defence having not proved through proper rebuttal that either A-5 to A-8 had been tenants

under the above house owners, who have been examined as witnesses or that they were PWD contractors, and further the fact that the returns filed in the names of bogus entities have been filed by P.W.s 1 and 2 at the instance of A-1, which has been spoken to by P.W.60 the handwriting expert coupled with the fact that A-1 has been the author of the TDS certificates, which also stands established through P.W.60, the allegation of the prosecution that the returns filed in their names of A-5 to A-8 are bogus returns, and the other returns were also fictitious in nature, as there is no such person, who had filed the return, and they were filed only for the purpose of reaping wrongful gain, stands established. The mere factum of payment of fine insofar as the returns pertaining to entities, who are not in existence, is only a ploy adopted by the appellants to strengthen their defence, in the event of the whole scheme of the fraud being detected and, therefore, certain orders were passed for payment of fine, which have been duly honoured insofar as the assesseees, who are fictitious. Therefore, the mere fact of payment of fine would not render the assesseees to be true and genuine, more so, when the returns have been filled up by P.W.s 1 and 2 and the TDS certificate annexed to the said returns were prepared by A-1.

168. Keeping the findings recorded above aside for the time being, this Court, now proceeds to analyze the act of P.W.62, the investigating officer, relating to the fictitious nature of certain of the assesseees. P.W.62, in order to ascertain the veracity of the assesseees, had sent a letter, Ex.P-1294, in the name of one of the assessee, viz., Shanmugam to the address mentioned in the file/income tax return. However, the said letter was returned with an endorsement 'No such addressee' by the postman, P.W.44, who was examined by P.W.62.

169. The evidence of the postal authorities, viz., P.W.s 24, 27, 38, 40, 41, 44 & 45, who speak about the return of the letters sent by the Income Tax Department, clearly show that many of the letters, which were sent by A-3 and A-4, which contained the refund orders, were returned with endorsement that there was no such addressee as found in the cover. Further, the evidence of P.W.s 6, 9, 10, 42 and 43, the owners of the premises, where the assesseees were said to be residing, have also categorically deposed that not only persons of the names of the assesseees were never residing in the said addresses, their premises were, at no point of time, been occupied by persons, who were contractors. From the above, it is categorically clear, that the assesseees, in whose names, many of the assessments were filed, were fictitious entities, created only for the purpose of gaining a pecuniary advantage by A-1 and that

the said returns, which culminated in the refund orders, when sent to the addresses were returned, which were, on return, collected by A-1 from A-3 and A-4, as is the categorical deposition of P.W.s 1 and 2 coupled with the evidence of the handwriting expert, P.W.60 conclusively establish that the returns were filed in the names of bogus/fictitious persons only for gaining pecuniary advantage. Therefore, this Court is of the considered view that the above issue stands squarely established by the prosecution.

ISSUE NO. 9 :

Whether non-furnishing of the proceedings of pardon granted to the approvers coupled with the non-examination of the Magistrate, who granted pardon, vitiates the prosecution.

170. One of the vociferous contentions advanced on behalf of the appellants is that the appellants have not been provided with the copies of the proceedings of pardon granted to P.W.s 1 and 2 and that the Magistrates, who granted the pardon have not been examined and this fallacy, not only vitiates the prosecution, but also affects the rights of the appellants to effectively submit their case by showing the fallacy in the pardon granted by the Magistrates to the benefit of the appellants.

171. Section 306 Cr.P.C. deals with tender of pardon to accomplice and it reads as under:-

"306. Tender of pardon to accomplice :-

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this Section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into, or trying the offence, at any stage of the inquiry or trial, may tender pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This Section applies to -

(a) any offence triable exclusively by the Court of Session or by the Court of a

Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing

(b) whether the tender was or was not accepted by the person to whom it was made; and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)-

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case-

(a) commit it for trial-

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952, (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."

172. A careful perusal of the above provision of law, more especially, sub section (3) reveals that the Magistrate, who grants pardon to a person, should record his reasons for so doing and further record as to whether the tender was or was not accepted by the person to whom it was made; and shall, on

application made by the accused, furnish him with a copy of such record free of cost.

173. It is not in dispute that the copies of the proceedings of pardon, granted to P.W.s 1 and 2, who were accused, but later turned approvers, have not been furnished to the appellants. Equally true it is that the Magistrates, who accorded pardon have not been examined. It is the contention of the appellants that the examining of the Magistrate would have helped the defence to establish that the pardon has not been granted in accordance with law and, therefore, the pardon granted would be non est in the eye of law and, therefore, the testimonies of P.W.s 1 and 2 would not be helpful to the prosecution in the absence of P.W.s 1 and 2 being treated as accused. It is the further submission on behalf of the appellants that copies of the pardon proceedings have not been provided to the appellants, which had derailed their defence and has prejudiced their side of their case and, therefore, the pardon granted is per se unsustainable.

174. In *Hukam Singh - Vs - State of Rajasthan* (2000 (7) SCC 490), the Hon'ble Supreme Court had reiterated the role of the prosecutor and his power to call witness to examine them in the course of trial. In this context, the Hon'ble Supreme Court held as under :-

12. In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public

Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice."

175. Insofar as the first leg of the contention relating to the examination of Magistrates, who granted pardon to the witnesses is concerned, it is well settled that it is upto the Public Prosecutor to examine witnesses, who the Prosecutor deems are necessary to establish the case of the prosecution and it is not for the appellants to choose as to who are the witnesses who should have been examined to establish their defence. Further, it is to be pointed out that the defence has not pin-pointed any fallacy in the pardon proceedings, but has merely contended that the examination of the Magistrates would have enabled them to establish that the pardon has not been granted in accordance with law. From the above, it is amply clear that the defence, without any particular point in its armour, only wants to conduct a roving enquiry in the form of a fishing expedition to find out any loophole that could be shown in the proceedings.

176. Insofar as the contention that copy of the proceedings of pardon ought to have been given to the appellants so as to enable them to cross examine the approvers, it is to be pointed

out that sub-section (3) to Section 306 Cr.P.C. clearly reveals that a copy of the pardon proceedings is to be given to the accused. The word 'accused' as is reflected in sub-section (3) only means the person, who is an accused and, who, by virtue of his turning approver, is granted pardon, alone is to be provided with a copy of the proceedings of pardon and it cannot be amplified to treat all the persons against whom, the trial stands culminated could be termed to be accused as is found in sub-section (3) and importing a meaning to the word 'accused' in derogation of the intent of the Parliament, would be too preposterous and would be totally against the intent and spirit of the provision of law.

177. It is to be pointed out that providing of a copy of the proceedings to the person, who has been granted pardon is only for the purpose of enabling the person to stand by the statements given by him, while he was granted pardon and any retraction from the same would only entail cancellation/termination of pardon to the said person. It is only for the above purpose that copy of the pardon proceedings is being given and importing some other meaning to the said provision so as to enable the persons against whom prosecution continues, based on the statement of the approver, to be provided with a copy of the pardon proceedings would be against the intent and purpose for which the said provision of law has been incorporated in the Code. Therefore, this Court is of the considered view that non-supply of the pardon proceedings to the appellants herein in no way could be held to be detrimental to the case of the defence and, therefore, this Court rejects the argument advanced aforesaid on behalf of the appellants.

ISSUE NO. 8 :

Whether the evidence of the approvers is sufficient to sustain the prosecution case.

178. The combined attack by the various learned counsel was cast on the evidence tendered by the approvers, viz., P.W.s 1 and 2, based on which the conviction has been recorded. It is the contention of the appellants that the approvers evidence cannot form the basis of conviction in the absence of other corroborating evidence and in the present case, there being no corroboration insofar as the approvers evidence is concerned, the case as against the appellants have not been proved by the prosecution.

179. The Supreme Court, in Ravinder Singh - Vs - State of Haryana, (1975 (3) SCC 742) has laid down the twin tests that are to be satisfied while appreciating and accepting the

evidence of accused turned approvers, wherein it was held as under :

"12. An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based.

13. The approver here was a constant companion of the accused. He was arrested along with the accused on August 13. He was in police custody till August 27 when he was sent to the jail thereafter. He wrote through the Jail Superintendent to the Magistrate on August 29 expressing willingness to give evidence as "sultani gawa" (originally King's witness). He was then granted conditional pardon on September 6 and was examined thereafter as a prosecution witness. Every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the court by time-worn judicial practice.

14. Ignoring for a moment that PW 5 is an approver, there is nothing in his evidence to show that his statement otherwise is unreliable, unnatural or improbable. There is nothing to show that he had on any earlier occasion made any contradictory statement on any material point. It is true that an approver is a person of low morals for the reason that he being a co-participator in the crime has let down his companion. As pointed out above, it is for this reason that a rule of caution has grown whereby the Court has to see if his evidence is corroborated in material particulars connecting the accused with the crime."

(Emphasis Supplied)

180. In *Mrinal Das - Vs - State of Tripura*, (2011 (9) SCC 479), the Hon'ble Supreme Court, after examining the various case laws insofar as accepting the evidence of the approvers and its competency vis-a-vis corroboration, has made a detailed analysis of the ratio laid down in various decisions, which circumscribe each other and, in effect, held as under :-

"17. Though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars. The evidence of an approver does not differ from the evidence of any other witness save in one particular aspect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. If the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particulars; but if the suspicion attaching to the accomplice's evidence be removed, then that evidence may be acted upon even though uncorroborated, and the guilt of the accused may be established upon the evidence alone.

18. In order to understand the correct meaning and application of this term, it is desirable to mention Section 133 of the Evidence Act, 1872 along with Illustration (b) to Section 114 which read as under:

"133. Accomplice.—An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

Illustration (b) to Section 114

"The court may presume—

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;"

19. Dealing with the scope and ambit of the abovenoted two provisions, this Court, in *Bhiva Doulu Patil v. State of Maharashtra* [AIR 1963 SC 599 : (1963) 1 Cri LJ 489 : (1963) 3 SCR 830] , has held that both the sections are part of one subject and have to be considered together. It has further been held:

"7. The combined effect of Sections 133 and 114, Illustration (b) may be stated as follows: according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

20. The very same principle was reiterated in *Mohd. Husain Umar Kochra v. K.S. Dalipsinghji* [(1969) 3 SCC 429 : 1970 SCC (Cri) 99] and it was held:

"21. ... The combined effect of Sections 133 and 114, Illustration (b) is that though a conviction based upon accomplice evidence is legal the court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from

an independent source. One accomplice cannot corroborate another...."

21. While considering the validity of the approver's testimony and tests of credibility, this Court, in Sarwan Singh v. State of Punjab [AIR 1957 SC 637 : 1957 Cri LJ 1014 : 1957 SCR 953] has held as under:

"7. ... An accomplice is undoubtedly a competent witness under the Evidence Act, 1872. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.

It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's

evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.

8. ... Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal courts."

23. In Abdul Sattar v. UT, Chandigarh [1985 Supp SCC 599 : 1985 SCC (Cri) 505] where the prosecution had sought to prove its case by relying upon the evidence of the approver, it was held that:

"6. ... The approver is a competent witness but the position in law is fairly well settled that on the uncorroborated testimony of the approver it would be risky to base the conviction, particularly in respect of a serious charge like murder."

Once the evidence of the approver is found to be not reliable, the worth of his evidence is lost and such evidence, even by seeking corroboration, cannot be made the foundation of a conviction. The abovesaid ratio has been reaffirmed and reiterated by this Court in Suresh Chandra Bahri v. State of Bihar [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60], Ramprasad v. State of Maharashtra [(1999) 5 SCC 30 : 1999 SCC (Cri) 651 : AIR 1999 SC 1969 : 1999 Cri LJ 2889] and Narayan Chetanram Chaudhary v. State of Maharashtra [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546] .

24. In Narayan Chetanram Chaudhary [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546] it was further held that:

"37. For corroborative evidence the court must look at the broad spectrum of the approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration may depend upon the facts of different cases. Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence.

Corroborative evidence must be independent and not vague or unreliable."

25. Similar question again came up for consideration before this Court in K. Hashim v. State of T.N. [(2005) 1 SCC 237 : 2005 SCC (Cri) 292 : 2005 Cri LJ 143] and Sitaram Sao v. State of Jharkhand [(2007) 12 SCC 630 : (2008) 3 SCC (Cri) 319] , wherein this Court has held that: (K. Hashim case [(2005) 1 SCC 237 : 2005 SCC (Cri) 292 : 2005 Cri LJ 143] , SCC p. 247, para 26)

"26. Section 133 of the Evidence Act expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with Section 114 Illustration (b). The latter section empowers the court to presume the existence of certain facts and the illustration elucidates what the court may presume and makes clear by means of examples as to what facts the court shall have regard to in considering whether or not the maxims illustrated apply to a given case. Illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars. The statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in Illustration (b) to Section 114 of the Evidence Act strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration must be clearly present in the mind of the Judge."

26. In Sheshanna Bhumanna Yadav v. State of Maharashtra [(1970) 2 SCC 122 : 1970 SCC (Cri) 337] the test of reliability of the approver's evidence and rule as to corroboration was

discussed. The following discussion and conclusion are relevant which read as under:

"12. The law with regard to appreciation of approver's evidence is based on the effect of Sections 133 and 114, Illustration (b) of the Evidence Act, namely, that an accomplice is competent to depose but as a rule of caution it will be unsafe to convict upon his testimony alone. The warning of the danger of convicting on uncorroborated evidence is therefore given when the evidence is that of an accomplice. The primary meaning of accomplice is any party to the crime charged and someone who aids and abets the commission of crime. The nature of corroboration is that it is confirmatory evidence and it may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime. When it is said that the corroborative evidence must implicate the accused in material particulars it means that it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. That evidence must confirm that part of the testimony which suggests that the crime was committed by the accused. If a witness says that the accused and he stole the sheep and he put the skins in a certain place, the discovery of the skins in that place would not corroborate the evidence of the witness as against the accused. But if the skins were found in the accused's house, this would corroborate because it would tend to confirm the statement that the accused had some hand in the theft.

13. This Court stated the law of corroboration of accomplice evidence in several decisions. One of the earlier decision is Sarwan Singh v. State of Punjab [AIR 1957 SC 637 : 1957 Cri LJ 1014 : 1957 SCR 953] and the recent decision is Lachhi Ram v. State of Punjab [AIR 1967 SC 792 : 1967 Cri LJ 671 : (1967) 1 SCR 243] . In Sarwan Singh case [AIR 1957 SC 637 : 1957 Cri LJ 1014 : 1957 SCR 953] this Court laid down

that before the court would look into the corroborative evidence it was necessary to find out whether the approver or accomplice was a reliable witness. This Court in Lachhi Ram case [AIR 1967 SC 792 : 1967 Cri LJ 671 : (1967) 1 SCR 243] said that the first test of reliability of approver and accomplice evidence was for the court to be satisfied that there was nothing inherently impossible in evidence. After that conclusion is reached as to reliability, corroboration is required. The rule as to corroboration is based on the reasoning that there must be sufficient corroborative evidence in material particulars to connect the accused with the crime."

27. In *Dagdu v. State of Maharashtra* [(1977) 3 SCC 68 : 1977 SCC (Cri) 421] the scope of Section 133 and Illustration (b) to Section 114 of the Evidence Act, 1872 and nature of rule of corroboration of accomplice evidence was explained by a three-Judge Bench of this Court in the following manner:

"24. In *Bhuboni Sahu v. R.* [(1948-49) 76 IA 147] the Privy Council after noticing Section 133 and Illustration (b) to Section 114 of the Evidence Act observed that whilst it is not illegal to act on the uncorroborated evidence of an accomplice, it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further that the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. The rule of prudence was based on the interpretation of the phrase 'corroborated in material particulars' in Illustration (b). Delivering the judgment of the Judicial Committee, Sir John Beaumont observed that the danger of acting on accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can

hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence and the story may be true in all its details as to eight of them but untrue as to the other two whose names may have been introduced because they are enemies of the approver. The only real safeguard therefore against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused.

25. This Court has in a series of cases expressed the same view as regards accomplice evidence. (See *State of Bihar v. Basawan Singh* [AIR 1958 SC 500 : 1958 Cri LJ 976]; *Haricharan Kurmi v. State of Bihar* [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344]; *Haroon Haji Abdulla v. State of Maharashtra* [AIR 1968 SC 832 : 1968 Cri LJ 1017] and *Ravinder Singh v. State of Haryana* [(1975) 3 SCC 742 : 1975 SCC (Cri) 202] .) In *Haricharan* [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] Gajendragadkar, C.J., speaking for a five-Judge Bench observed that the testimony of an accomplice is evidence under Section 3 of the Evidence Act and has to be dealt with as such. The evidence is of a tainted character and as such is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars." सत्यमेव जयते

28. In *Rampal Pithwa Rahidas v. State of Maharashtra* [1994 Supp (2) SCC 73 : 1994 SCC (Cri) 851] , while considering the very same provisions, this Court has held that the approver's evidence must be corroborated in material particulars by direct or circumstantial evidence. This Court further held that while considering credibility of the approver and weight to be attached to his statement, the statement made in bail application of the approver can be looked into by the court.

29. It is clear that once the evidence of the approver is held to be trustworthy, it must be shown that the story given by him so far as an accused is concerned, must implicate him in such manner as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence upon corroboration is based on the rule of caution and is not merely a rule of law. Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence."

181. The ratio adumbrated in a catena of decisions of the Hon'ble Supreme Court, as noted above, leaves no doubt in the mind of this Court that the Courts can very well act upon the evidence of the approver for rendering a finding as to the culpability of the other accused in the crime, but prudence warrants that the said evidence should be corroborated by way of materials and the evidence of the approver should be corroborated on all material particulars. The evidence of the approver must be of such a nature that it unerringly points to the guilt of the other accused person in the crime, including himself, as part and parcel of the crime. It is not necessary that the corroboration of the evidence of the approver must be in the form of ocular testimony, suffice if the materials placed by the prosecution, be it in the nature of documentary evidence, corroborates the story unfolded through the version projected by the approver, the Court would be safe to act upon such an evidence to render a finding.

182. In the case on hand, as discussed threadbare with regard to the issues framed with regard to A-1 to A-8, the evidence of the approvers, viz., P.W.s 1 and 2 speak volumes about the acts committed by all the accused and the approvers have given the minutest details possible, even which implicates them in the commission of the offence, but true, with certain minor contradictions, as pointed out by the defence. The minor contradictions pointed out by the defence does not outweigh the evidence of the approvers in toto, but only casts a slur, but the said slur gets wiped out by the material documents placed by the prosecution before the trial court to prove the culpability of the appellants in the commission of the offence. The materials placed by the prosecution, in extenso, deals with the acts committed by all the appellants, including the approvers in siphoning off the amounts from the coffers of the income tax department, to which they are not legally entitled. The materials documents, placed before the court have been proved to

bear the handwriting of A-1 and P.W.s 1 and 2 as also that of A-5 to A-8, which has been spoken to by P.W.60, the handwriting expert. In such a scenario, the evidence of P.W.s 1 and 2, viz., the approvers also find corroboration from the evidence of P.W.60, the handwriting expert and the other oral and documentary evidence placed by the prosecution also acts in aid of the version spoken to by the approvers, viz., P.W.s 1 and 2. Therefore, holistically considered, the prosecution has tabled enough materials, which has conclusively established that the version spoken to by the approvers are not only cogent and convincing and does not gets swayed on any points in their cross examination, but has also been corroborated in full through the material documents as also the evidence of the handwriting expert P.W.60.

183. Therefore, analysed from all angles, the twin tests, as enumerated by the Hon'ble Supreme Court in Ravinder Singh's case (supra) has been fully satisfied by the prosecution and, therefore, the ratio laid down by the Hon'ble Apex Court relating to rendering a conviction on the basis of the evidence of the approvers, coupled with the documentary evidence and other material evidence has been substantially proved by the prosecution and, therefore, this Court has no hesitation to hold that the approvers' evidence coupled with the other documentary and material evidence unerringly point the finger on the appellants as the persons, who have committed the offence.

184. An incidental contention is raised that P.W.s 1 and 2, though initially have been shown as accused, but, however, to fasten the crime on A-1 to A-8, they have been granted pardon u/s 306 Cr.P.C., which act of the prosecution is a clear bias and, therefore, renders the whole case unsustainable. It is therefore the submission of the learned counsel for A-2 to A-4 that, but for the approvers' evidence, there is no material, which categorically points a finger on A-2 to A-4 and only to link A-2 to A-4 in the conspiracy, P.W.s 1 and 2 have been granted pardon. It is the further submission of the learned counsel for A-2 that the said act of the prosecution is evident from the crime that were initially registered against some other income tax officers for similar offences, in which A-1 and P.W.s 1 and 2 were involved and so are the fictitious assesseees, but for reasons best known to the prosecution, the said proceedings against those persons were dropped and only the crime registered against the appellants were taken to its logical end, which shows the pick and choose attitude of the prosecution. In fine, it is the submission of the learned counsel for the appellants that the attitude of the prosecution towards the appellants leaving persons, who were similarly investigated clearly shows

bias and, therefore, the case of the prosecution only shows a mala fide intent and, therefore, liable to be rejected.

185. In counter, it is the submission of the prosecution that it is within its power to drop proceedings against any person based on the evidence collected and where no FIR has been registered. In the present case, based on information, crimes were registered and were investigated against various persons, but for want of evidence, the crimes registered against some persons were dropped and dropping of proceedings against those individuals would not vitiate the prosecution initiated against the appellants.

186. It is not in dispute that certain other crimes were also registered against other persons and those crimes were also investigated along with the case against the present appellants. However, according to the prosecution, since the crimes registered against those persons, relevant materials did not conclusively point a finger on those persons and that oral evidence was also not supportive, the cases against those persons were dropped.

187. From the materias available on record, which is not in dispute, cases were registered against these appellants in the present crime and cases were registered also against some other officers of the income tax department. However, in the course of investigation, which includes investigation against some of the officers of the income tax department, the materials collected were not conclusive enough to have a FIR registered against such of those individuals, which led to the dropping of further investigation against them.

188. When a case is in the investigative phase, it is within the purview of the prosecuting agency to decide about proceeding further with the investigation against such persons. If the materials collected during the course of investigation does not conclusively point a finger on the person so investigated, it is within the power of the prosecution to drop the investigation against those individuals. In the present case, true it is that some persons, who were also income tax officers, similarly placed as A-2, were investigated by registering cases against them. However, the prosecution dropped further investigation on the ground that the materials were not conclusive enough to proceed against them. It is evident from the materials available on record that the case has been proceeded neither based on any complaint, nor any offence has been made out warranting submission of report before the jurisdictional Magistrate in terms with the provisions of the

Criminal Procedure Code. The dropping of further action in relation to the crimes against other income tax officers cannot be taken advantage of by the appellants herein to further their case, as even if an offence is made out, wrong dropping of the case against those officers cannot be a ground to throw out the present case, as the prosecution has conclusively, based on oral as well as documentary evidence, proved that the appellants have conspired and committed acts to gain pecuniary advantage to the detriment of the exchequer. This Court, on an overall analysis of the case, is of the considered opinion that the dropping of investigation against other income tax officers is in no way detrimental to the prosecution, as each case has to be tried on its own merits and the appellants cannot take advantage of an investigation, which did not yield the necessary evidence, to their benefit to have the case against them thrown out.

189. This Court is emphatic to hold that the complicity of the appellants in the loss of money suffered by the exchequer, could in no way be termed to be illusory, and the same stands proved by the prosecution through oral and documentary evidence and clearly the appellants, by their act, have caused wrongful loss to the exchequer. On a holistic consideration, as analysed above, this Court is of the considered view that the prosecution has proved the charges framed as against the appellants and the court below, on proper appreciation of the materials, both oral and documentary, has found the appellants guilty and, accordingly, has convicted them, which does not warrant interference at the hands of this Court.

190. The respective learned counsel appearing for the appellants submitted that in the event of this Court finding the appellants guilty of the charges, the appellants being aged above 70 years and even some of the appellants are octogenarians, who have crossed 80 and that they are suffering from age related ailments, this Court may consider minimum sentence taking into consideration the age of the appellants and also the passage of almost two decades and a half.

191. This Court, after taking into consideration the submissions of the learned counsel appearing for the appellants and also considering the age of the appellants and also the fact more than two decades have passed since taking cognizance of the case, is of the considered view that it would meet the ends of justice if minimum sentence is awarded to the appellants.

192. In the result, CrI. A. Nos.375, 378 and 381 to 383 of 2008 are dismissed confirming the conviction recorded by the

trial court. However, insofar as sentence is concerned, this Court sentences the appellants as hereunder :-

Accused	Section	Sentence
A-1 to A-8	120-B r/w 419, 420, 467, 467 r/w 471, 468, 468 r/w 471 IPC and Sec. 5 (2) r/w 5 (1) (d) of PC Act, 1947 and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988	Convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.10,000/- each, in default to undergo simple imprisonment for a period of six months.
A-1	419 (18 counts), 420 (62 counts), 467 (65 counts), 467 (65 counts), 468 (64 counts) and 468 (64 counts) r/w 471 IPC (64 counts)	Convicted and sentenced to undergo simple imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo simple imprisonment for a period of one week. (For each of the count)
A-2	5 (2) r/w 5 (1) (d) of PC Act, 1947 (51 counts) and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988 (10 counts)	Convicted and sentenced to undergo simple imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo simple imprisonment for a period of one week. (For each of the count)

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A-3	5 (2) r/w 5 (1) (d) of PC Act, 1947 (48 counts) and Sec. 13 (2) r/w 13 (1) (d) of PC Act, 1988 (10 counts)	Convicted and sentenced to undergo simple imprisonment for a period of three months under each count to pay a fine of Rs.200/- under each count, in default to undergo simple imprisonment for a period of one week. (For each of the count)
A-5	419, 420 (4 counts), 467 (11 counts), 467 r/w 471 (11 counts), 468 (2 counts) and 468 r/w 471 IPC (2 counts)	Convicted and sentenced to undergo simple imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo simple imprisonment for a period of one month. (For each of the count)
A-6	420 (3 counts), 467 (3 counts) & 467 r/w 471 IPC (3 counts)	Convicted and sentenced to undergo simple imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo simple imprisonment for a period of one month. (For each of the count)
A-7	419, 420 (2 counts), 467 (5 counts) & 467 r/w 471 IPC (5 counts)	Convicted and sentenced to undergo simple imprisonment for a period of one month under each count to pay a fine of Rs.1000/- under each count, in default to undergo simple imprisonment for a period of one month. (For each of the count)

A-8	419, 420 (3 counts), 467 (3 counts), 467 r/w 471 IPC (3 counts), 468 (3 counts) & 468 r/w 471 (3 counts)	Convicted and sentenced to undergo simple imprisonment for a period of six months under each count to pay a fine of Rs.1000/- under each count, in default to undergo simple imprisonment for a period of one month. (For each of the count)
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193. The appeal in CrI. A. No.374/08 filed by the appellant/A-4 stands abated. The sentences imposed on the appellants are directed to run concurrently and the period of incarceration, if any, suffered by the appellants shall stand set off u/s 428 Cr.P.C. Bail bonds, if any, executed by the appellants shall stand cancelled and the trial court shall take steps to secure the presence of the appellants and commit them to prison, if the appellants do not surrender on their own volition within a period of four weeks from the date of receipt of a copy of this order, to undergo the modified period of sentence imposed upon them.

194. Before parting with the case, this Court wants to point out certain investigative lacunae, which if otherwise had studiously been followed, would have had a more direct case not only against A-1, but also against other accused. Many accounts have been opened in various banks, according to the prosecution, in the names of fictitious persons, the forms of which have been filled up by P.W.s 1 and 2, including signing the specimen signature card. In this regard, it is to be pointed out that in the present day scenario, for opening of a bank account, the bank asks for 'Know Your Customer', more famously called the 'KYC' documents to be submitted. But in the preceding years, more especially, the time when the crime has been committed, i.e., during the period 1985 -1987, the procedure that was normally followed is that the person, who wants to open the account should be introduced by an existing account holder of the bank, certifying that he knows the person and that the application form for opening the account should be accompanied with the identity proof and address proof of the individual. In the case on hand, as detailed above, the application forms and the specimen signature cards have been filled up by P.W.s 1 and 2, as is evident from the opinion and deposition of P.W.60. In one case, as pointed out above, as to the assessee, Saravanan, even the introducer is one Thangamani, who is A-1 herein. A perusal of the evidence available on record reveals that the refund orders have gone to specifically to two addresses in Erode, which is not the address as is reflected in the returns

filed. However, the address given in the returns, in many cases of account opening, have been shown as the address of the concerned persons. The said addresses, as given in the account opening forms, have been grossly repudiated by the owners of the said premises stating that no PWD contractors have ever rented their premises, least the appellants, viz., A-5 to A-8 herein, who have been shown as the assesseees/PWD contractors.

195. The non-accompaniment of the identity and address proof of the individual opening the account definitely casts a serious doubt even on the officials of the bank, as this Court feels that without the connivance of the bank officials, perpetrating such a large scale crime would have been next to impossibility. Definitely there ought to have been some complicity of some officials of the bank as also the introducer, who were instrumental in introducing the persons connected with the bank for opening the account. Had the investigative machinery been more vigilant and had thought on its heels, it would have casted the investigative net more far and wide as the extent of malpractice perpetrated would have pulled within its fold multifarious personalities far and wide from the other public establishments. One more important aspect which the investigative machinery could have investigated is the account activity overall and more particularly pursuant to the encashment of the refund orders. Investigation into the said aspect would have paid more dividends in the form of making a record that only for the purpose of encashing the refund orders, the said accounts were opened, which would unequivocally prove the nature of fraudulent and bogus transaction, which have been perpetrated by the appellants on the exchequer. However, this Court does not want to amplify any further, but only as a matter of precaution, points out the above, so that the investigative machinery will be more careful while dealing with cases of such a magnitude in future, as to put it in simple terms, white collar crimes such as these are the determining blocks and detrimental blocks in the progress of any country.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

GLN

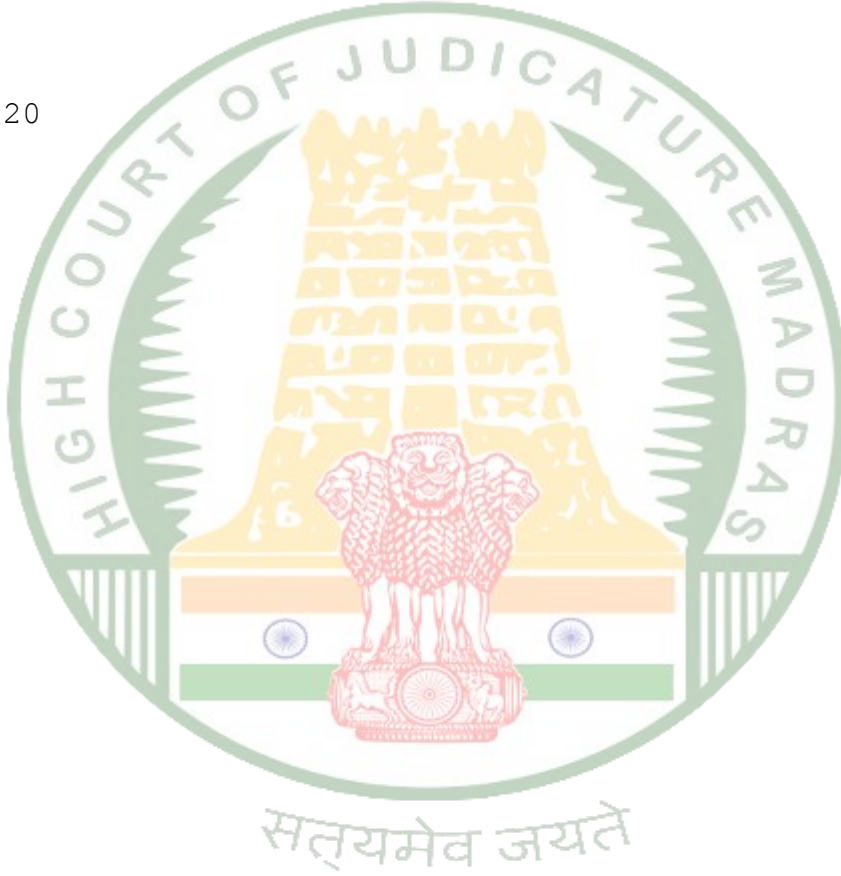
To

1. The II Additional District Judge
Special Court for CBI Cases
Coimbatore.

2. The Special Public Prosecutor
CBI Cases, High Court, Madras.

CRL. A. NOS. 374, 375, 378,
& 381 TO 383 OF 2008

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