

21.08.2020

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

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

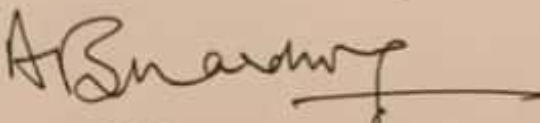
Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Advocate Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

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

(Through VC using Cisco Webex App.)

Sh. P.K. Dubey, Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma submitted that in the previous order sheet at page 2, second last paragraph PW-50 be read as PW-59.

Today, the Id counsel read the evidence of PW-58 Sh. S. Rehman, who was the Additional Director, Income Tax (Investigation) Unit, New Delhi at the relevant time. He deposed that he controlled, supervised and monitored the action taken by the officers under his control under Section 132, 133A and 131 of the Income Tax Act. He deposed that the executive summary of the Appraisal Report is given as a brief overview of the report. It was submitted by the Ld. Counsel that this evidence shows that the Appraisal Report merges with the executive summary and Appraisal Report becomes one of its annexure. The witness also deposed that in February, 2007 a search was conducted at Suresh Nanda's Group of companies by the investigation wing and the duties of this


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witness were to control, supervise and monitor the search action. The Ld. Counsel submitted that it shows Accused No. 1 Sh. Ashutosh Verma was not acting independently and each and every act of Sh. Ashutosh Verma was being supervised by PW-58. The witness also deposed the preparation and submission of Appraisal Report was discussed in routine on several occasions particularly for submission of the report. Ld. Counsel submitted that it shows Accused No. 1 Sh. Ashutosh Verma was not free to write whatever he desired in the Appraisal Report. The witness also deposed that he had submitted the file to the Director of Income Tax, Investigation-I on 28.02.2008 and it was not returned back to him. Ld. Counsel submitted it shows there was no opportunity with Accused No. 1 Sh. Ashutosh Verma to change the date of Appraisal Report from 28.02.2008 to 22.02.2008. Thereafter, Ld. Counsel referred to the cross-examination of this witness recorded at the internal Page 5 of the evidence dated 07.11.2007. The Ld. Counsel submitted that no witness has deposed that there is over-writing for ante-dating the Appraisal Report from 28.02.2008 to 22.02.2008. There is no forensic examination to support the allegation of change in date from 28.02.2008 to 22.02.2008. Ld. Counsel submitted that all the seizures were made in this case from Director, Investigation which also shows that this was not possible for Accused No. 1 Sh. Ashutosh Verma to make interpolation in the Appraisal Report.

Next, Ld. Counsel referred to the evidence of PW-59 Sh. Ram Singh who was IO of this case. The Ld. Counsel submitted that up till now, it has been seen that no official witness of Income Tax Department has deposed about dilution of Appraisal Report. On the other hand, CBI did not rely upon Appraisal Report in support of its case but when the same was brought on record on the application of the accused, the Appraisal Report was relied and exhibited in the evidence of PW-12. However, there is no document/evidence to show dilution of

Appraisal Report. There is no evidence of ante-dating the Appraisal Report from 28.02.2008 to 22.02.2008.

The Ld. Counsel referred to the evidence of this witness recorded on 08.03.2008 internal Page 3, where the witness has deposed about seizure of the Appraisal Report. The witness also deposed that his limit of investigation was only to see the submission of Appraisal Report and processing of the same with senior officers of Accused No. 1 Sh. Ashutosh Verma.

The Ld. Counsel referred to the evidence of this witness where he has deposed that he had not inquired from the senior officer of the accused, if there is any flaw in the Appraisal Report or not. The witness had volunteered that the Appraisal Report was delayed by Sh. Ashutosh Verma in spite of notices and caution by his senior officer. However, Ld. Counsel submitted that no witness has deposed that the delay was on the part of Accused No. 1. No memo was given, no inquiry was initiated against Sh. Ashutosh Verma for the delay in filing the Appraisal Report. He submitted that the senior officers have already deposed that it was a complex matter and they had been requesting for more time to file the report and therefore no malafide can be attributed to Accused No. 1 Sh. Ashutosh Verma for delay in Appraisal Report. He submitted that it is not the case of prosecution that the delay gave any monetary benefit to Suresh Nanda Group of Companies.

The Ld. Counsel pointed out to the evidence at internal Page 5 where the IO has deposed that he had not taken any independent opinion from any expert as to whether there was any flaw in the Appraisal Report or not.

The witness also deposed that he does not remember if any senior officer of Accused No. 1 Sh. Ashutosh Verma had passed any order to reconsider the Appraisal Report. The witness deposed that neither he knows the name of assessing officer conducting proceedings against Suresh Nanda & Company nor made enquiries with regard to the fact that the assessing officer

can take independent opinion on the basis of documents submitted before him irrespective of Appraisal Report.

The witness was given a suggestion that in spite of seizure of Appraisal Report, the same was not relied upon as there was no flaw in it. However, the witness volunteered that the bare reading of the Appraisal Report could not establish any deletion/minimization of income tax liabilities. The minimization of liability and dilution of Appraisal Report were discussed in the recorded conversation between accused persons. He also deposed that he did not prepare any chart regarding the comparison of Appraisal Report with the alleged intercepted conversation to find out how the Appraisal Report was compromised to minimize the tax liability and whether any fact was deleted from the Appraisal Report.

The witness also deposed that he had seized the laptop of Accused No. 1 Sh. Ashutosh Verma and could not remember whether he had prepared mirror image or clone copy of the official laptop or not. He could not remember if the laptop was sent to CFSL for forensic examination. He deposed, he found nothing in the laptop regarding deletion made in the Appraisal Report.

He further deposed that the laptop was forwarded for forensic examination by the then S.P. and the report was marked to the witness, but the same was not received by him.

When attention of the witness was drawn to report Mark PW-59/S-85, he deposed that CFSL expert has not given any specific information on the deletion in the draft Appraisal Report.

Next, the Ld. Counsel referred to the evidence of this witness recorded on 24.05.2018, internal Page 2, where he deposed that his investigation was limited only about the tax liabilities and matters related thereto. It was submitted by Ld. Counsel that the IO did not investigate in that regard in as much as he has already deposed that he could not find any flaw in the

Appraisal Report. He could not find any evidence of dilution of Appraisal Report or deletion of important material from the report.

He also deposed that PW-12 Sh. Shailender Handa never deposed in his statement under Section 161 Cr.P.C. that the recommendation in Appraisal Report has strong bearing on the assessing officer.

The Ld. Counsel argued that how this allegation came in the charge sheet has not been explained by any evidence of prosecution witnesses.

Thereafter, Ld. Counsel referred to the conclusion of the Appraisal Report prepared by Sh. Ashutosh Verma and read it in ex-tenso to show that the accused had suggested strict action against Suresh Nanda Group of Companies for evasion of tax liability upto 450 crores and had also suggested provisional attachment of property under Section 281B of I.T. Act. He submitted that the conclusion of Appraisal Report would show that neither there was any dilution nor suppression of material fact.

Ld. Counsel submitted that in this case, initially a Closure Report was proposed but only under pressure, the charge sheet was filed. Ld. Counsel submitted that up till now he has addressed arguments to prove that there is no admissible electronic evidence available with prosecution to prove its case. There is no evidence of deletion in the Appraisal Report or concealment of material fact or any interpolation in the Appraisal Report which was prepared by Accused No. 1 Sh. Ashutosh Verma in consultation with senior officers.

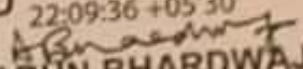
He submitted that on the next date, he shall address arguments about assessment order made by the assessing officer on the basis of Appraisal Report of Accused No. 1 Sh. Ashutosh Verma and the decisions of Appellate Tribunal, Hon'ble High Court and Hon'ble Supreme Court and he will address arguments regarding arrest of accused from a Hotel room at Bombay.

Now, the matter shall be listed for arguments on **Thursday i.e. 27.08.2020** and **Friday i.e. 28.08.2020** at **2:15 PM**.

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

ARUN
BHARDWAJ

Digitally signed by
ARUN BHARDWAJ
Date: 2020.08.21
22:09:36 +05'30'


(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/21.08.2020