

IN THE COURT OF THE SPECIAL JUDGE (CBI), COURT NO.IV,
BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Special Judge (CBI),
Court No.IV, Bhubaneswar.

T.R.Case No.18/2006
(Arising out of R.C. No.35(A)/2004)

Republic of India Prosecution.

-Versus-

Krupasindhu Mishra, aged about 54 years,
S/o.Arjun Prasad Mishra,
Ex-AAO, LIC, Sambalpur,
Resident of Sagarpada,
PS-Bolangir, Dist.-Bolangir.

.... Accused
(ON BAIL)

For the Prosecution : Sri Ajay Singh, P.P., C.B.I.

For the Accused : Sri R.C.Sethi &
Associates, Advocates.

Date of argument : 16.5.2016

Date of judgment : 28.5.2016

**Offence under Section 13(2) read with 13 (1) (e) of
P.C.Act, 1988.**

JUDGMENT

The accused stands charged Under Sec.13(2) read with Sec.13(1)(e) of Prevention of corruption Act, 1988 for having disproportionate assets to the tune of Rs. 10,39,856/- (Rupees Ten Lakhs Thirty-nine thousand Eight hundred Fifty six) which was disproportionate to his known source of income.

2. The prosecution case, in brief is as follows:

The accused Krupasindhu Mishra while functioning as Higher Grade Assistant and Asst. Administrative Officer at L.I.C. of India, Bolangir Branch and Titlagarh Branch

respectively has amassed assets amounting to Rs.18,05,408/- approximately in his name and in the name of his family members during the period from 2000-2001 to September 2004 by abusing his official position which is disproportionate to his known source of income.

It is the further case of prosecution that the accused has the following legal and known sources of income during the period from 2000-2001 to September 2004.

Sl.No.	Source of income	Period	Income amount in (Rs)
1.	Income from net salary of Sri Mishra	For the financial year 2000-2001	589,000
2.	Income from the net salary of his wife	-do-	300,000
3.	Income from LIC policy maturity amount	March 2004	13,000
4.	Income from LIC Policy (Money Back return)	November 2002	14,000
5.	Income from maturity of NSC	In 2004	40,000
6.	Income from maturity of ICICI Bond	August, 2004	27,000
7.	Flood advance from his office	February 2004	7,500
8.	Draught advance from his office	January 2003	7,500
9.	House repairing loan from IOB, Titilagarh Branch	2003	150,000
		Total	11,48,000 (Approximately)

3. During search and subsequent enquiry, it is found that the accused was in possession of huge assets disproportionate to his known source of income. To determine the exact assets possessed by the accused, his residential house and office premises were searched. During search and subsequent enquiry, movable, immovable assets including gold, silver ornaments, bank deposits, premium in LIC policy were traced from the residence and office premises of the accused during

the check period from 2000-2001 to September 2004 as noted below:-

Computation of income, expenditure, Assets and D.A.

1. Assets(Movable + Immovable + Deposit)	Rs.1,03,622/-
2. Income	Rs.14,26,307/-
3. Expenditure	Rs.23,62,541
4. Probable D.A.	Rs.10,39,856/-

Thus, the accused was in possession of disproportionate assets to the tune of Rs.10,39,856/- which is believed to have been amassed by corrupt and illegal means. On the basis of such memorandum, Shri B. K. Pattanaik, Inspector of Police, CBI, SPE, Bhubaneswar lodged a written report Ext.99 before the S.P.CBI, Bhubaneswar who ordered for registration of the case and directed investigation by B. Samal, Inspector of Police CBI, SPE, Bhubaneswar. Accordingly, the case stands registered vide R.C.Case No.35(A)/2004 and Sri B.Samal, Inspector of Police CBI investigated into the case.

4. The I.O. in course of investigation, calculated the data of income, expenditure and assets of the accused, his wife Santoshini Mohapatra and one son Brahmananda Mishra and found that the accused during the check period from 2000-2001 to September 2004 has amassed assets amounting to Rs. 10,39,856/-, against income of Rs.14,26,307/- and expenditure of Rs.23,62,541/-. Thus it is found that the accused has acquired disproportionate assets of Rs.10,39,856/- to his known source of income. The I.O. obtained sanction order for prosecution issued by Shri L.M. Lohani, Zonal Manager, Life Insurance Corporation of India, Zonal Office, Kolkata and on conclusion of the investigation filed the charge sheet under Sec.13(2) read with Sec.13(1)(e) of Prevention of Corruption Act, 1988 against the accused for committing criminal misconduct and amassing disproportionate assets to his known source of income.

5. To substantiate the charge under Sec.13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988, the prosecution has to prove :-

- (i) That the accused is a public servant.
- (ii) That the nature and extent of pecuniary resources Or property which are found in his possession.
- (iii) As to what were his known sources of income i.e.

Known to the prosecution, and ;

- (iv) That such resources or property found in possession of the accused were disproportionate to his known sources of income during the check period from 2000-2001 to September 2004.

6. At the trial, prosecution has examined as many as 30 witnesses and relied on several documents vide Exts. 1 to Ext.107. P.W.27 Bhawani Kanta Pattnaik, the Inspector of CBI, Bhubaneswar lodged the FIR Ext. 99 on the basis of house search and inventory. P.Ws.16 and 17 were present during search of the house of the accused located at Sagarpada, Bolangir as well as they proved the seizure list pertaining to inventory vide Ext. 66. P.W.1 proved the expenditure of the accused incurred towards purchase of TV vide Ext.1, P.W.2 is the Headmaster in P.P. Academy, Bolangir proved the educational expenditure of Brahmananda Mishra son of accused vide Ext.2, P.W.5 proved the educational expenses of Brahmananda Mishra son of accused from 1.4.2000 to 1.7.2002 vide Ext.8, P.W.3 the Manager of P & IR, LIC of India, Sambalpur proved the salary particulars of the accused for the period from 1.4.95 to March 2005 vide his letter Ext.3, P.W.4 proved the deposit of Rs.1,50,000/- vide deposit voucher Ext.6 and Rs.1,50,000/- vide deposit voucher Ext.7 by the accused in the name of Santosh Mohapatra. P.W.6 has proved the Income Tax returns filed by accused in his office vide Ext.9 and 10, P.W.7 proved the income from salary of Santosini Mohapatra wife of the accused vide Ext.11 and letter dtd.22.2.2006 which she has submitted the salary statement before D.I. of Schools vide Ext.11/1, P.W.8 has proved the salary statement of accused received at Titlagarh from October 2001 to July 2004 vide Ext.12 and 13 and computer generated statement of account dtd.9.8.2004 and 21.8.2004 in respect of Miscellaneous cash book vide Ext.14 and 15. P.W.9 has proved the deposit of cash of Rs.1,50,000/- in the name of Santosh Mohapatra by the accused vide deposit slip Ext.16, and deposit of Rs. 1,05,000/- in the name of Santosh Mohapatra by the accused vide Ext.18, P.W.10 has proved the telephone bill amounting to Rs.15,215/- deposited by the accused vide Ext.20, P.W.11 proved the premium amount of Rs.860/- and Rs.945/- insurance of Maruti Car deposited by accused vide Ext.23 and 24, P.W.12 proved the loan amount of Rs.1 Lakh granted in favour of accused towards repair of his house vide Ext.25, P.W.13 has proved

that he has received Rs.7,55,000/- from the accused at Bolangir and Rs.2,00,000/- has been received by cashier A.K. Kumbhar from the accused vide Ext. 26 to Ext. 38, P.W.14 has proved the salary particulars of accused for the relevant period and deposit of Rs.9,75,000/- by the accused in the name of Santosh Mohapatra as well as his investment declaration for Income Tax rebate and income and expenditure towards LIC policies of accused vide Ext. 40 to Ext.57, P.W.16 is the RTO who proved the Maruti Car purchased by the accused for a consideration of Rs.1,20,000/- from one Anil Kumar and proved the deposit of tax of the vehicle of Rs.2549/- and other documents of such transaction vide Ext.58 to 65, P.W.16 and 17 are the witnesses who were present at the time of inventory of the house of accused proved the inventory list Ext.66, P.W.18 proved the statement of account standing in the name of accused in Andhra Bank, Bolangir vide Ext.67, P.W.19 proved the seizure of fixed deposit certificates in the name of accused vide Ext.69. P.W.20 is a witness towards investment made by the accused in fixed deposit in District Central Co. Operative Bank, Main Branch, Bolangir and proved the document vide Ext.73, P.W.21 is a witness to the statement of account in respect of SB account No.288 in the name of accused vide Ext.91, P.W.22 proved statement of account of SB Account No.20067 of the accused from 18.10.2001 to 7.9.2004 vide his letter Ext.92 and also proved the letter Ext.94 towards Home Loan account bearing No.HLO 15/2003 of accused for the period from 1.4.2003 to 29.9.2004, P.W.23 gave information vide Ext.96 regarding purchase of NSCs by the accused worth of Rs. 31,000/-. P.W.24 proved documents vide Ext.60 to 65 regarding transfer of his vehicle i.e. Maruti Car in favour of accused. P.W.25 is the sanctioning authority who accorded sanction vide Ext.97 against the accused. P.W.26 is a witness in whose presence the specimen signature of accused in eight sheets vide Ext.98 was obtained by CBI, P.W.27 is the informant who lodged before S.P.CBI and he proved the registration of such FIR by S.P.CBI, P.W.28 has proved his deduction of LIC premium from his salary, P.W.29 is the Government Examiner of questioned documents and P.W.30 is the investigating officer who on completion of investigation of the case, placed the charge sheet.

7. The accused, in defence has examined his father Arjun Prasad Mishra as D.W.1, his mother Smt. Jayanti Mishra as D.W.2 and one Amin namely Rajendra Satpathy as D.W.3.

8. In case of disproportionate assets, the law is well settled that, "the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public servant to account for such excess". The offence becomes complete on the failure of the public servant to account or explain such excess. The burden of proof regarding the first limb is on the prosecution whereas the onus is on the public servant to prove the second limb. This principle has been consistently well expounded by the Hon'ble Apex court in the case of K. Veeraswamy Vrs. Union of India and others (1991) 3 S C C -655, wherein it has been held that –

"It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "Satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the Court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused however, could discharge that burden of proof" on the balance of probabilities " either from the evidence of the prosecution and/or evidence from the defence."

The same view has been reiterated by the Hon'ble Apex Court in the case of Ashok Tshering Bhutia Vs. State of Sikkim (2011) 48 OCR (Supreme Court) 1060.

In the backdrop of the parameter of law set out, it is thus, essential for the Court to consider as to whether in the facts and circumstances of the case, the prosecution has been able to discharge its initial burden and, if so, as to whether the accused has been able to satisfactorily account there for by discharging the burden of proof on the balance of probabilities. In furtherance to achieving that object, the Court may examine the facts of the case, as application of the law would certainly depend upon that.

9. P.W.30, Inspector of Police, CBI, Bhubaneswar in his evidence has stated that on 19.11.2004 he was entrusted with the investigation of RC Case No.35/2004 and during investigation, he examined the witnesses, collected the documents and he also sent the questioned documents to GEQD, Kolkata for comparison and expert opinion vide Ext.101. During investigation, he seized some documents vide Ext.46 and also seized certain documents from the accused vide seizure list Ext.52. He also seized some documents from S.K. Panigrahi, Branch Manager, Bolangir Anchalik Gramya Bank, Bolangir vide seizure list Ext.69. He conducted search of the house of the accused and prepared inventory memo Ext.66 in presence of P.Ws.16 and 17. During investigation, he also received the documents from Executive Engineer, WESCO, BED, Bolangir through letter dtd.15.5.2006 vide Ext.106 and also received letter dtd.10.12.2005 vide Ext.107 regarding receipt of some documents from LIC. After obtaining sanction order from competent authority and on completion of investigation he submitted charge sheet. It is pertinent to note that the check period was from 2000-2001 to September 2004 and till the date of house search. In the preliminary enquiry, it is ascertained that the accused had possessed the following assets.

ASSETS

Movable assets found in possession of the accused At the beginning of the check period.

i) House hold articles found during the house			
Search of the accused on 30.9.2004	...	Rs.12,384=00	
ii) FD Certificates No.70	...	Rs.11,000=00	
iii) FD Certificates No.76	...	Rs.10,000=00	
iv) Balance in SB A/C No.2030 in BAGB, Bolangir	...	Rs.56,387=00	
Total	...	Rs.89,771=00	

The learned defence counsel has claimed that the prosecution has not taken into account the deposits made during the pre-check period vide Ext.77, 83, 84, 85 and 86 amounting to Rs. 20,000/-, Rs.11,000/-, Rs.6,000/-, Rs.10,000/- and Rs.24,000/- (totalling to Rs.71,000/-). On scrutiny of the above exhibits it is found that accused had made above deposits during pre-check period, which should be given benefit to the accused. Hence, the pre-check period assets comes to Rs. 89,771.00 + Rs.71,000/- =Rs.1,60,771/-.

Assets at the beginning of the check period as on 30.9.2004

i) Movable and house hold articles found during The house search on 30.9.2004(as per Inventory)	...	Rs.29,250=00
ii) Sony Colour TV 21"	...	Rs.22,490=00
iii) Maruti 800,MP-23-L9578	...	Rs.1,20,000=00
iv) Refrigerator(Kelvinator)	...	Rs.6,000=00
v) Balance in SB A/C No.288 at IOB, Sambalpur	...	Rs.11,496=00
vi) Balance in SB A/C.No.L-45 at Andhra Bank	...	Rs.2,311=00
vii) Balance in SB A/C.2939 at BAGB,Bolangir	...	Rs.1,030=00
viii) Balance in SB A/C No.20067 at IOB, Titilagarh	...	<u>Rs.816=00</u>

Total ...Rs.1,93,393=00

Income received during the check period from 01.01.2000 to 30.9.2004

i) Net salary income of accused	...	Rs.5,68,091=00
ii) Net salary income of Smt.Santoshini Mohapatra wife of accused	...	Rs.2,95,680=00
iii) Income from LIC Policies as Maturity & Survival benefits received by accused and his wife	...	Rs.36,610=00
iv) House repairing loan from SBI received by accused	...	Rs.1,00,000=00
v) Housing loan from IOB Titilagarh received by accused	...	Rs.1,50,000=00
vi) Interest on FDRs at BAGB, Bolangir received by accused.	...	Rs.1,39,581=00
vii) Interest on FDRs at DCCB, Bolangir received by accused	...	Rs.1,15,719=00
viii) Interest on SB A/C No.203 in BAGB, Bolangir Received by accused	...	Rs.11,272=00

ix) Interest on SB A/C.L-45 in Andhra Bank Bolangir Received by accused	...	Rs.6,111=00
x) Interest incurred in SB A/C.200067 at IOB Titilagarh received by accused	...	<u>Rs.3,243=00</u>
Total	...	Rs.14,26,307=00

Expenditure during the check period from 01.01.2000 to 30.9.2004

i) Educational expenses of Brahmananda Mishra	...	Rs.1,892=00
ii) Educational expenditure of Brahmanda Mishra	...	Rs.4,430=00
iii) Expenditure on Tel.No.233224	...	Rs.15,215=00
iv) Deposits in different LIC policies by accused And his wife	...	Rs.1,60,863=00
v) Cash deposits in LIC,Sambalpur & Titilagarh By accused during check period	...	Rs.12,30,000=00
vi) NSC incurred by accused	...	Rs.8,000=00
vii) ICICI Bonds incurred by accused	...	Rs.20,000=00
viii) ICICI Bonds incurred by accused	...	Rs.10,000=00
ix) ICICI Bonds incurred by accused	...	Rs.10,000=00
x) NSC incurred by accused	...	Rs.11,000=00
xi) Tax paid to RTO,Bolangir by accused	...	Rs.999=00
xii) Insurance premium of Maruti Car	...	Rs.1,805=00
xiii) House Repairing loan deposited by accused	...	Rs.1,00,000=00
xiv) Payment of house repairing loan at SBI,Bolangir	...	Rs.1,23,000=00
xv) House repairing/Renovation	...	Rs.1,50,000=00
xvi) Payment of house repairing loan at IOB	...	Rs.18,460=00
xvii) Investment made in DCCB,Bolangir by wife	...	Rs.20,000=00
xviii) Payment of house rent to different owners	...	Rs.1,22,480=00
xix) Purchase of NSCs	...	Rs.20,000=00
xx) Deposit in LIC	...	Rs.2,266=00
xxi) Electric charges paid to WESCO,Bolangir	...	Rs.11,844.00
xxii) Fuel expenses of Maruti Car	...	Rs.1,22,605=00
xxiii) Fuel expenses of Scooter	...	Rs.7875=00
xxiv) Household expenses incurred during the check Period (as 1/3 rd of net pay)	...	<u>Rs.1,89,363=00</u>
Total	...	Rs.23,62,541=00

From the charge sheet, it is ascertained that P.W.30 the Investigating Officer, on the basis of the materials and documents has computed the income, expenditure and disproportionate assets of the accused as noted below:-

1. Assets(Movable + Immovable + Deposit) =Rs.1,93,393/-
2. Income =Rs.14,26,307/-
3. Expenditure =Rs.23,62,541/-
4. Disproportionate Assets.
(Rs.24,66,163/-) - (Rs.1,26,307/-) =**Rs.10,39,856/-**

Accordingly, the charge has been framed against the accused that he has amassed assets in his name and the name of his family members to the tune of Rs.10,39,856/- disproportionate to his known source of income during the check period from 01.01.2000 to 30.09.2004.

10. As regards movable assets, it is in the evidence of P.W.16 and 17 and the Investigating Officer P.W.30 that both P.Ws.16 and 17 had accompanied officers while conducting search in the house of accused Krupasindhu Mishra located at Sagarpada, Bolangir on 30.9.2004 and an inventory list vide Ext.66 was prepared at the time of search. According to them, the date of acquisition and price of the properties had been mentioned against the items on the seized properties as per the version of the wife of the accused. The parents of the accused were also present at the time of inventory. On perusal and careful scrutiny of inventory list Ext.66 the articles seized vide Sl.No.1 to 52 were acquitted before the check period i.e. 01.01.2000. The approximate cost of those articles in toto comes to Rs.1,93,393/-.

11. With regard to purchase of T.V., it is the evidence of P.W.1 that accused had purchased one Sony T.V. worth of Rs.22,490/- from his shop on 12.11.2000 vide cash memo Ext.1 which has not been challenged by the defence. Similarly, towards purchase of Maruti 800 Car bearing No.MP 23L-9578, it is the evidence of P.W.24 that on 22.6.2001 he had transferred the vehicle to accused for Rs.1,20,000/- on virtue of an affidavit Ext.60, affidavit vide Ext.59 and according to him the ownership was transferred as per Ext.65 on 8.2.2002 after submission of documents to RTO, Bolangir. P.W.15 the R.T.O. in-charge, Bolangir in his evidence has disclosed that basing on the requisition of CBI authority, the documents as per Ext.58 have been submitted before CBI authority. He has also proved the affidavit sworn by accused vide Ext.59 and another affidavit sworn by Anil Keswani (P.W.24). The defence has not challenged about the purchase of the vehicle by the accused and the cost of the above vehicle in any manner. Therefore, it

is clearly proved by cogent and clinching evidence that the accused had possessed a Sony TV worth of Rs.22,490/- and a Maruti -800 car worth of Rs.1,20,000/- at the time of inventory. With regard to other articles mentioned in the inventory list and its cost, the defence has not raised any objection towards the inventory and the cost of the above articles.

12. During argument, the learned defence counsel drew the attention of the Court, in the inventory list, the Investigating Officer has mentioned that some articles have been possessed by the accused which are also purchased/possessed before the check period i.e. 01.01.2000 and while calculating the amount of said articles, the investigating officer has included the price of those articles which should be deducted from the list.

13. On perusal and on scrutiny of the inventory list, it is seen that, the articles described which were available in the Drawing-cum-bed room, Bed room No.II, Dining room, Bed-room No.III and kitchen room and garage are mostly purchased before the check period i.e. 01.01.2000 except the above mentioned TV, Maruti-800 Car. In the inventory list, the investing Officer has clearly mentioned that, out of the above articles, some articles were also gift articles. Therefore, the cost of those articles prior to the check period should be deducted from the above list. Although, D.W.1 in his evidence has stated that he had given cash of Rs.1,00,000/- to the accused for purchasing the car in the year, 2001, he has not proved the same through any documentary evidence and he has failed to say, from what source, he acquired such amount. The defence did not dispute the quantum of the cost of the articles recovered from the house of the accused. The defence examined D.W.1 and 2, who have categorically deposed that they have given some money to the accused on different occasions. But they have failed to say regarding mode of payment of money and source of acquirement. The explanation offered by the defence witnesses with regard to inventory list, the property statement, it is safely held that the articles which were recovered during inventory of house of accused at Sagarpada belong to them. To sum up the cost of the articles as mentioned in movable assets of the accused comes to Rs. 1,93,393=00.

14. As regards the bank and other deposits in the name of the accused and his wife Santoshini Mohapatra there is no

dispute. P.W.21 in his evidence has stated that as per requisition of CBI, he submitted some documents vide Ext.90 which contains certified copy of the statement of account in respect of SB Account No. 288 in Indian Overseas Bank, Ainthapalli, Branch, Sambalpur in the name of accused and as per the above statement of accused, there was balance of Rs.11,496/- as on 30.9.2004. Similarly according to P.W.18, on requisition, he submitted information to CBI authority regarding deposits of accused in Andhra Bank, Bolangir Branch. According to him, he has submitted the statement of accused in respect of SB A/C. No.L-45 in the name of accused and as on 1.3.1999 there was balance of Rs.20,723/- . It is needless to mention here that the above amount as stated by P.W.18 is before the check period and therefore, the same cannot be taken into consideration. Further, he has stated that there was balance of Rs.2311/- as on 27.9.2004 in the above mentioned account, which is not disputed by the defence. Similarly the balance in SB A/C No.2939 at BAGB, Bolangir amounting to Rs.1,030/- and balance in SB A/C No.20067 at IOB, Titilagarh amounting to Rs.816/- has not been disputed by the defence. Similarly at the beginning of the check period some FD certificates are seized from the house of the accused i.e. FD Certificates No.70 amounting to Rs.11,000/- , FD certificate No.76 amounting to Rs. 10,000/- and the balance in SB A/C. No.2030 in BAGB, Bolangir for Rs.56,387/- is not disputed by the defence. Therefore, it presume that the accused has admitted the quantum of above deposits. It is not the case of prosecution that any hard cash has been seized from the possession of the accused.

15. (i & ii) As regards the income, P.W.30 being the I.O. has obtained the salary particulars of the accused from January 2000 to September 2004 from the office of the accused and the salary particulars of the wife of accused Santoshini Mohapatra for the period from January 2000 to September 2004 from D.I. of Schools vide Ext.11. Such salary particulars of the accused are relied on by the prosecution vide Exts.3, 12,13 and 14. P.W.30 the I.O. obtained the salary particulars of the accused for the period 1.4.95 to March 2005 from P.W.3 Manager of P & IR, LIC Sambalpur. According to P.W.3 on 7.12.2005 he supplied the particulars for the period from 1.4.95 to March 2005 vide Ext.3 and also for the month of March, 2001, March 2003 and March 2004 vide Ext.4. As the check period is started

from 01.01.2000 to 30.9.2004, the salary income of the accused and salary income of his wife for the above period is taken into consideration. It is the positive case of the prosecution that the income from Salary of the accused during the check period comes to Rs.5,68,091/- and the salary income of the wife of the accused during the check period comes to Rs.2,95,680/- Disputing the net salary of the accused, the learned defence counsel has stated that the income of the accused has been wrongly calculated and the I.O. left out the salary to the month of 3/2001, 3/2003 and 3/2004 of Rs.9,401/-, Rs.11,892/- and Rs.11,220/- total amounting to Rs.32,513/-. But from the salary statement vide Ext.13, it is noticed that the gross salary for the month of March 2001, March 2003 and March 2004 are Rs.11,861.40, Rs.14,802.64 and Rs.15,805.83 respectively and the net salary has been mentioned for the said period are Rs.9411/-, 11,394/- and Rs.7492/- respectively. Therefore, the salary statement obtained by the investigating officer for the check period is found to be correct and there is no discrepancies in the salary statement proved by the prosecution. There is also no dispute regarding income of the wife of the accused towards salary.

(iii) As regards the income from LIC policies, it is the case of the prosecution that accused has got Rs.36,610/- from LIC policies and maturity and survival benefits. To prove the same, P.W.14 in his evidence has stated that he submitted information relating to LIC Policy number vide Ext.42. On perusal of the Ext.42, it is seen that the wife of the accused has received an amount of Rs.36,610/- from three LIC policies as per Ext.42 as maturity and survival benefits. The said fact also not disputed by the defence. Thus, the income of the wife of the accused from the LIC policies under Ext.42 as per prosecution version comes to Rs.36,610/-.

(iv) As regards the income of the accused from the loan, it has been projected by the prosecution that the accused has availed house repairing loan from SBI Bolangir Branch vide loan Account No.01593016062 as revealed from Ext.25. In this regard P.W.12 the Chief Manager, SBI, Bolangir Branch has stated that on 19.10.2001 Rs.1,00,000/- had been given as a loan to accused towards repair of house and he was refunding at the rate of Rs.1000/- per month and he had paid all total Rs.1,23,444/- during 31.13.2001 to 6.11.2003. The accused

in his explanation did not dispute the same and admitted to have availed the loan of Rs.1,00,000/- from SBI, Bolangir.

(v) So far the income of accused towards loan obtained by him from I.O.B., Titilagarh, it is the case of prosecution that the accused on 12.11.2003 had available housing loan of Rs.1,50,000/-. P.W.22 in his evidence has proved such statement of prosecution vide Ext.95. According to P.W.22 he had submitted Home Loan account No.HLO 15/2003 of the accused for the period from 1.4.2003 to 29.9.2004 by his forwarding letter Ext.94. On scrutiny of Ext.95, it is found that the accused had obtained such loan from I.O.B., Titilagarh. The said version of P.W.22 has also not been challenged by the defence during evidence. Thus, the projection of the income of accused for Rs.1,50,000/- towards loan amount is well proved by P.W.22.

(vi) So far the income of accused towards receipt of interest on FDRs at BAGB Bolangir, it is the case of prosecution that the accused has received Rs.1,39,581/- towards interest on FDRs at Bolangir Anchalik Gramya Bank, Bolangir is not disputed by the accused. The accused in his explanation did not dispute the same and admitted to have received the above amount and the prosecution projected the income of accused Krupasindhu Mishra which comes to Rs. 1, 39,581/-.

(vii) So far the income of accused towards receipt of interest on FDRs at DCCB, Bolangir, it is the case of prosecution that the accused has received Rs.1,15,719/- towards interest on FDRs at District Central Co-Operative Bank, Bolangir. The accused in his explanation did not dispute the same and admitted to have received the above amount and the prosecution projected the income of accused Krupasindhu Mishra which comes to Rs. 1, 15,719/-.

(viii) It is the claim of prosecution that the accused had received an amount of Rs. 11,272/- towards interest incurred in SB Account No.2030 of Bolangir Anchalika Gramya Bank vide Ext.71. P.W.19 has also proved the above documents vide Ext.71. P.W.19 in his evidence has stated that as on 1.1.2000 there was balance of Rs.56,387/- which has been considered balance on the date of beginning of the check period. The accused in his explanation did not dispute the same and admitted to have received the above amount and the

prosecution projected the income of accused Krupasindhu Mishra which comes to Rs.11,272/-.

(ix) So far the income of the accused towards receipt of interest from Andhra Bank, Bolangir Branch, it is the case of prosecution that the accused had received an amount of Rs.6111/- towards interest in SB Account No. L-45. In this regard, on scrutiny of Ext.67 it is seen that the accused had received interest of the above amount from Andhra Bank, Bolangir Branch. The accused had also not disputed the same. Therefore, the income of the accused from above source comes to Rs.6111/-.

(x) So far the income of accused towards receipt of interest incurred in SB Account No.200067 at IOB Titilagarh, the investigating officer in his statement has claimed that the accused had received the interest of Rs. 3243/- during the check period. But on perusal of Ext.92 & 93, it is seen that the accused has received an amount of Rs.4280/- towards interest in such account. Therefore, an amount of Rs.1037/- should be given benefit to the accused.

16. Learned defence counsel during argument has drew the attention of the court stating that the wife of the accused had some income by way of tuition and she is an Income Tax Payee. According to him, the prosecuting agency has not accounted for the income of the wife of the accused towards tuition. In this regard no document has been filed by the accused that his wife was doing tuition and from that source, she had some income D.W.1 in his evidence has stated that he was receiving monthly pension of Rs.15,000/- in the year 2001-2004. He had also received Rs.45,000/- towards encashment of unutilized leave on his retirement. But nowhere he has stated that D.W.1 has regularly paid the pension amount to the accused. He has also failed to prove that he has paid Rs.45,000/- towards encashment of unutilized leave on his retirement to the accused. Therefore, the above amount as stated by D.W.1 will not be considered that the said amount comes to the income of accused.

Similarly, D.W.1 in his evidence has stated that he had given Rs.9 Lakhs to the accused in the year 2004 and also given an amount of Rs.1 Lakh to the accused towards purchase of car in the year 2001. But during cross-examination he has failed to say the date or month in the year 2004 when he had given loan of Rs.9 Lakhs to his son. He has also not described

in his evidence as to how he acquired such property and from which source. He has also proved by producing any document that he had given Rs.1,00,000/- to the accused towards purchase of a car. D.W.1 has also failed to file any document that he has received monthly pension.

17. It is the evidence of D.W.1 that he had some agricultural land wherein his annual agriculture income is Rs.4,50,000/-. He has proved the pass Book Ext.A bearing Sl.No.071/11 issued on 31.7.2007 in his favour by the Tahasildar,Tusra. But on perusal of such Pass Book Ext.A, it is found that the annual agricultural income of the father of the accused has not been mentioned. Though, it is believed for a moment that the father of the accused has some landed property, but it is very difficult to hold that he had much income from that source.

18. P.W.3 the Manager of P & IR, LIC of India during his cross-examination has stated that the pension of father of accused and house rent income of mother amount in Rs.1,19,024/- has been mentioned in the declaration submitted by the accused vide Ext.5. Learned P.P. CBI argued on this score that Ext.5 has been written by the accused to P.W.3 on 3.1.2006 and therefore, it is no way helpful to the accused. On perusal of Ext.5 it is seen that the accused had written such letter to P.W.3 on 3.1.2006 mentioning the pension and agricultural income and rent income. Therefore, since it is after the check period, the same will not be taken into consideration while calculating the income of accused.

19. In the instant case, the assets and income of the accused, his wife, father and mother are required to be computed towards disproportionate assets of the accused. Therefore, the income of the wife of accused, his father and mother should be taken into consideration. But the prosecution in a slipshod manner has not computed the income of D.W.1(father) and D.W.2 (the mother) of the accused leaving their income. But at the same time, the accused has failed to prove the income of his father and mother through any documents. Without any document, it is the onerous duty of the court to compute disproportionate assets of the accused. Since the accused has failed to prove the income of his father and mother through cogent and clinching evidence, this court is of opinion that the father and mother of the accused had no income during the check period.

From the income tax return filed by the accused and his wife it is found that in the said income tax returns, the income of his father and mother has not been described while submitting the same to Income Tax Department. Since the accused and his wife have concealed the same, therefore, the income of the father and mother of the accused from any source should not be calculated while calculating the income of the accused.

20. It was submitted by the learned P.P. CBI that in absence of any proof to so that the family members of the accused had any separate income, enabling them to deposit any money as fixed deposit, the said deposit should be calculated towards the assets of the accused. This court is unable to accept the said submission in view of the decision of Hon'ble Supreme Court reported in AIR 1977 SC 796 in case of Krishnanand Agnihotri V. State of M.P., wherein Their Lordships have held that:

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

Besides that in the present case, no specific and reliable evidence has been adduced by the prosecution to prove that the fixed deposits standing in the name of the wife of accused were the money deposited by the accused as benami in the name of his wife. It was submitted by learned counsel for the defence that the fixed deposits which were standing in the name of accused have been duly shown by him in the income tax return for the relevant periods and therefore, it cannot be said that the said amount has been illegally amassed for the purpose of calculating his disproportionate assets.

Simply because the amount deposited by the accused as fixed deposit might have been shown in his income tax return by itself cannot be a ground to hold that the said property has been legally acquired. In this regard, the Hon'ble Supreme Court in the judgment reported in (2014) 57 OCR (SC) para-23 at page 514 in case of State of Tamilnadu V. M. Sureshraj and other have held that :

"Property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servant to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law."

21. (i) As regards expenditure, it is the case of prosecution that the accused had spent Rs.1,892/- towards educational expenses of his son Brahmananda Mishra at Patitapaban Academy, Bolangir. According to P.W.2 Headmaster of P.P. Academy, Bolangir, he furnished the educational expenses statement of Brahmananda Mishra son of accused. He has mentioned the total expenditure Rs.1922/-. Therefore, to sum up, the accused had spent Rs.1922/- towards educational expenses of his son for the period from 2.7.2002 to 7.12.2004 during the check period.

(ii) It is also the case of prosecution that the educational expenses of the son of accused for the period from 01.01.2000 to 01.07.2002 was of Rs.4430/-. P.W.5 in his evidence has proved the educational expenses of son of accused through Ext.8. It is found from the Ext.8 that the total educational expenses of the son of accused during the above period was Rs.4430/-.

(iii) As regards to the amount paid by the accused towards telephone bills, it is the case of prosecution that the during the period from 01.01.2000 to September 2004, the accused had paid Rs.15,215/- towards expenditure on his telephone No.233224. According to P.W.10, the accused has paid the above amount as per computer generated slip as supplied by him vide Ext.20. On perusal of Ext.20, it is found that the accused has paid the above amount towards telephone charges.

(iv) As regards to the deposit of amount towards LIC policies, it is the case of the prosecution that an amount of Rs.1,60,863/- have been deposited by the accused and his wife as premium in different LIC policies excluding salary deduction during check period. The accused in his explanation did not dispute the same and admitted to have deposited the above amount towards premium of LICs in his name and in the name of his wife.

Learned defence counsel has argued that the wife of the accused is a school teacher and has sufficient income to make payment towards deposit of money in LIC policies and other deposits. Therefore, the same may be treated that, the deposits in the name of the wife of the accused is her own source of income. While assessing the same, the prosecution has wrongly taken into consideration of the said deposits. In this regard, the evidence of P.W.14 is vital while considering the claim of defence. P.W.14 in his evidence has stated that As per the information five LIC policies were in the name of Santoshini Mohapatra and 13 in the name of Krupasindhu Mishra. P.W.14 in his evidence has proved Ext.42. On perusal of Ext.42 it is found that Policy bearing No. 590306971 Rs. 6,600/- has been deposited out of which Rs.3575/- was deposited during the check period. Further the wife of accused had deposited Rs.22,845/- in LIC Policy No. 591510290. The other deposits made in LIC policies of the wife of the accused were deducted from her salary. Therefore, it is found that the above deposited amounts of Rs.26,420/- in total has been deposited by the wife of the accused in LIC policies are during the check period.

Similarly, P.W.20 in his evidence has stated that vide transaction voucher Ext.89, the wife of the accused had deposited Rs.20,000/- on 14.1.2004 in BDCC Bank, Bolangir during the check period. On perusal of the Ext.20, it is mentioned that the above amount of Rs.20,000/- has been deposited in the name of wife of accused in BDCC Bank Bolangir during the check period.

Just because some money has been deposited in Bank, LIC, ICICI Bond, purchase of NSCs and other deposits in the name of wife of the accused, does not necessarily gives rise to any inference or presumption that the said money must have been given by the accused for that purpose, when there is no

specific or reliable evidence led by the prosecution that in fact, the said money kept as deposits and purchase of NSCs actually belongs to the accused. This aspect assumes much importance in view of the admission made by some of the prosecution witnesses including P.W. 14 and 20.

On discussion of the above point, the court comes to a conclusion that the amount of Rs.26,420/- deposited in LIC policies and Rs.20,000/- deposited in BDCC Bank, Bolangir during the check period i.e. Rs.26,420/- =+ Rs. 20,000/- = Rs. 46,420/- should be excluded from the expenses as stated by the prosecution.

v) Regarding cash deposit made by the accused in LIC, Bolangir and Titilagarh for the period from 9.8.2004 to 10.9.2004, the investigating officer in his statement has mentioned that the accused has deposited an amount of Rs.9,75,000/- at Bolangiri and Rs.2,55,000/- at Titilagarh totalling an amount of Rs.12,30,000/-. P.W.14 in his evidence has proved the above fact of deposit vide Ext.40. The above evidence of P.W.14 has not been challenged by defence from any corner.

vi) It is the case of prosecution that the accused had deposited an amount of Rs.39,000/- in purchase of NSCs vide Ext.47,48 and 96. The above facts of deposit has been proved by P.W.14 in his evidence and no dispute has been made by defence for such deposit. Therefore, it is proved that the accused had purchased the above NSCs during the check period. P.W.23 in his evidence has also proved Ext.96 stating that the accused had purchased NSCs for the above amount. The accused also in his income tax returns for the assessment year 2004-2005 and for the assessment year 2000-2001 has claimed rebate towards deposit of Rs.11,000/- and Rs.8000/- respectively towards purchase of NSCs.

Vii, viii,ix,& x) Regarding deposit of ICICI bonds for Rs.20,000/-,Rs. 10,000/- and Rs.10,000/- as claimed by the prosecution, the above fact of deposit has not been disputed by the accused. Rather, on going through the income tax return filed by the accused for the assessment year 2003-2004 Rs.10,000/-, for the assessment year 2002-2003 Rs.10,000/-, for the assessment year 2001-2001, an amount of Rs.20,000/- has been reflected by the accused. P.W.6 in his evidence has stated that in the year 1999-2000 the accused has shown

purchase of ICICI bond of Rs.20,000/- for 2000-2001, purchase of ICICI bond for Rs.10,000/- for 2001-2002, Rs.10,000/- ICICI bond for 2002-2003. The accused has also not disputed the above version of P.W.6.

xi) The investigating Officer has mentioned in the statement that the accused had paid Rs.999/- towards tax for his vehicle during the period from 25.6.2001 to 27.3.2003. P.W.15 in his evidence has proved the above payment made by the accused vide Ext.63.

xii) P.W.11 in his evidence has proved Ext.23 and 24, wherein he has stated that the accused had deposited Rs.860/- in respect of policy No.3221 and Rs.945/- in respect of policy No.344 on 31.1.2003 and 27.4.2004. Accordingly, on perusal and scrutiny of Ext.23 and 24, it is noticed that the accused had deposited a total amount of Rs.1805/- towards payment of insurance policy of his vehicle. The above fact has also not been disputed by the defence.

xiii) It is the case of prosecution that the accused had spent Rs.1,00,000/- towards repairing of his house which he borrowed a loan from SBI Bolangir Branch. Although the prosecution has not filed any documents to prove that the accused had spent the above amount towards repairing of his house, but at the same time, the defence has not disputed the above fact as submitted by prosecution.

xiv) According to prosecution, the accused had repaid the loan amount of Rs.1,23,444/- at SBI Bolangir. P.W.12 has proved such repayment made by accused in his evidence. According to P.W.12 the accused had paid Rs.1,23,444/- during 31.12.2001 to 6.11.2003. Since, it is not disputed by the defence, the above fact is believable.

xv) Although the prosecution has claimed that the accused had spent Rs.1,50,000/- towards renovation of his house during the year 2003, but the said fact has not been disputed by the accused.

xvi) It is the case of prosecution that the accused had made payment of Rs.18,460/- during the period from 29.11.2003 to 30.9.2004 towards repayment of loan for house repairing at IOB, Titilagarh. P.W.22 in his evidence has proved Ext.95, wherein, it is clearly mentioned that the accused had made payment of the above amount. The deposit of above amount is also not disputed by the accused.

xvii) Prosecution has proved the deposit of an amount of Rs.20,000/- made by wife of accused Santoshini Mohapatra in DCCB, Bolangir. P.W.20 in his evidence has proved Ext.89. On perusal of Ext.89, it is noticed that the wife of accused invested Rs.20,000/- in cash vouchers vide Ext.89. As per the discussion made above in preceding paragraphs, since the above amount of Rs.20,000/- has been deposited by the wife of the accused in her own source of income, the same should be excluded from the expenditure as claimed by the prosecution.

xviii) As regards to the payment of house rent by the accused, it is the case of prosecution that the accused had made payment of Rs.1,22,480/- to different house owners for the period from 01.01.2000 to August 2004. Prosecution has proved the same through I.T.returns submitted by the accused. On perusal of I.T. returns submitted by accused, it is found that the accused has shown the house rent deposits in I.T. returns. The accused has also not disputed the above fact of payment of house rent in any manner.

xix) Prosecution has claimed that the accused Krupasindhu Mishra has purchased two NSCs each amounting Rs. 10,000/- (total Rs.20,000/-) on 27.4.2004. P.W.14 during evidence has proved the purchase of above two NSCs total amounting to Rs.20,000/- i.e. Rs.10,000/- each vide Ext.47 and 48.

(xx)) The investigating officer in his calculation sheet has mentioned that the accused Krupasindhu Mishra has deposited an amount of Rs.2,266/- on 24.3.2000 towards LIC premium. During evidence, P.W.14 has proved through Ext.56 in respect of deposit of LIC premium bearing Policy No.591194201.

xxi) It is the case of the prosecution that the accused had deposited electric charges of Rs.11,844/- to WESCO, Bolangir for the period from 01.01.2000 to 30.9.2004. Although the prosecution has not proved the above fact by any supporting documents, but the accused has not disputed the same.

Xxii & xxiii) It is the case of the prosecution that the accused had made expenditure of Rs.1,22,605/- and Rs.7,875/- towards fuel and maintenance expenses for the Maruti Car and Scooter respectively during check period. At the time of argument, learned defence counsel pointed out that the Investigating Officer did not produce any iota of evidence to support the story of the prosecution. No documents in this

regards also filed by the prosecution regarding the expenses made by the accused towards fuel charges. Therefore, the expenditure of Rs.1,22,605/- and Rs.7,875/- towards fuel and maintenance of the vehicles of accused is not believable. The above amount i.e. Rs.1,22,605/- + Rs. 7,875/- = Rs. 1,30,580/- should be deducted from the expenditure statement as given by the investigating Officer.

xxiv)As regards the calculation made by the Investigating Officer towards house hold expenses incurred during the check period (as 1/3rd of net pay received), it is the case of prosecution that the accused had spent Rs.1,89,363/- from January 2000 to Sept.2004 towards house hold expenses. On perusal of the salary particulars of the accused it is found that the accused has received net salary of Rs.5,68,091/-. Although, the prosecution has not filed any document to prove that the accused had made house hold expenses during the check period, the above statement of the prosecution has not been challenged by the defence. At this stage, this court is of the opinion that the amount of Rs.1,89,363/- as mentioned by the investigating officer is 1/3rd amount of the net salary of the accused.

22. It is the evidence of P.W.30 that he received the sanction order from sanctioning authority P.W.25. P.W. 25 in his evidence has stated that on 30.8.2006 he was General Manager, LIC of India, Eastern Zone, Kolkata. He was competent to remove the accused from service in any departmental proceeding. According to him, after going through the documents placed before him and being satisfied about existence of prima facie case against the accused, he accorded sanction vide Ext. 97 for launching prosecution against him.

The General Manager being the sanctioning authority has satisfied and accorded sanction to launch prosecution against the accused Asst. Administrative Officer, LIC of India. In the case of Mohammed Iquabal Ahmed Vrs. State of Andhra Pradesh, AIR 1979 SC 677, it has been held by the Hon'ble Supreme Court that :-

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways ; either (1) by producing the

original sanction which itself contains the facts constituting the offence and the ground of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio.”

Law is well settled that, “grant of sanction is not an idle formality or an acrimonious exercise, but a solemn and sacrosanct act which intends to protect the satisfied categories of officials against frivolous prosecution. In the instant case, it is evident from P.w.25, the sanctioning authority that after going through the documents placed before him by CBI, he accorded sanction to launch prosecution against the accused-Asst. Administrative Officer. The sanction order is marked Ext.97. Therefore, there is no infirmity in the sanction order.

Regard being had to the evidence of the prosecution and the explanation of the accused, the court considers it desirable to recalculate the balance-sheet of assets, expenditure, income, probable savings and the disproportionate assets of the accused and his wife during the check period i.e. from 01.01.2000 to September, 2004.

BALANCE SHEET

Sl.No.	Different heads	Amount (in Rs.)
1.	Assets at the beginning of the check period	Rs. 89,771/-
2.	Assets at the end of the Check period	Rs.1,93,393/-
3.	Assets acquired during check period (Sl.No.2 – Sl.No.1)	Rs.1,03,622/-
4.	Expenditure during check period	Rs.21,14,561/-
5.	Amount spent for the assets and expenditure during the Check period (Sl.3 + 4)	Rs.22,18,183/-
6.	Income earned during the check period	Rs.14,26,307/-

7.	Disproportionate Assets (Sl.No.5 - Sl.No.6)	Rs.7,91,876/-
8.	% of D.A. as compared to the income (Rs.7,91,876/- divided by Rs.14,26,307/-)	55.51 %

It is settled principle of law that if the accused wants to show certain income it must have been intimated by him to the competent authority. In the present case the income derived by the accused and his wife has not been informed to the concerned authorities. It is significant to note that in cases involving Section 13(1)(e) of the Prevention of Corruption Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of his income. The expression "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. More significantly, how the assets were acquired and from what source of income is within the special knowledge of the accused.

23. Besides, the expression the "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It cannot be contended that "known sources of income" means sources known to the accused. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence to show that the accused was known to earn his living by service under the Government during the material period. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In case of a Government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. It is also important to note that the legislature has advisedly used expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came to

possess his large wealth but also to satisfy the court that his explanation was worthy of acceptance. It is manifestly obvious from the evidence and materials on record that the accused has signally failed to prove how he amassed such a huge wealth which is evidently disproportionate to his known sources of income. Understandably the wide gap between the income and expenditure of the accused has not been bridged.

24. It was submitted by the learned defence counsel that the accused had earlier faced trial in T.R.No.12 of 2006 under Sec.420, 468 and 471 IPC and under Sec.13(1)(d) read with Sec.13(2) of the P.C. Act, 1988 and the period in question of that case is also the same period in this case. Therefore, it is argued by the learned counsel for the defence that the present case is not maintainable on the principle of double jeopardy.

After going through the allegations made in the said case as well as in the present case, this court finds the offence as alleged against the accused in the present case are quite distinct and different and in the facts and circumstances of the present case, the principle of double jeopardy is not applicable.

25. It is further submitted by learned counsel for the accused that no reasonable opportunity was given to the accused by the I.O. to clarify and make his stand regarding some amount illegally shown towards his income, although, the said income ought not to have been included under the heading of his income for the check period in question.

In this regard, it has been held by the Hon'ble Supreme court in the decision reported in 1991 SCC (CrI) 734 (SC) in case of K. Veera Swamy V. Union of India, wherein Their Lordships have held as follows:

"But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known source of Income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry, against the conduct of the public servant or determining the disputed issues regarding the disproportionately between the assets and the income of the accused. He just collects

material from all sides and prepares a report, which he files in the Court as charge-sheet.”

26. The prosecution has clearly established the income, expenditure and assets of the accused. It is manifest that during check period the accused has total income of Rs. Rs.14,26,307/-. He had incurred expenditure and possessed assets to the tune of Rs.22,18,183/-. The preponderance of oral as well as documentary evidence leads to the inescapable conclusion that during the check period the accused has amassed wealth to the tune of Rs.7,91,876/- which is grossly disproportionate to his known sources of income.

27. It is the settled principle of law that in a criminal trial, the prosecution has to prove its case against the accused beyond all reasonable doubt. But the same standard or rigour is not application for the purpose of assessing the evidence adduced by the defence, since the defence can prove its case in the standard of preponderance of probability. Taking into consideration the said principle of law, this court finds that the defence has not been able to prove in the standard of preponderance of probability that the disproportionate assets of the accused as found above in this case by this court, did not belong to the accused and that it belong to any other person including his parents and wife.

28. In ultimate appraisal of the totality of the evidence on record I am constrained to hold that prosecution has proved its case against the accused beyond all reasonable doubt. I, therefore, find the accused guilty of the offence under Sections 13(1) (e) read with Section 13(2) of the P.C.Act, 1988 and convict him thereunder.

Special Judge,C.B.I., Court No.IV,
Bhubaneswar.

Dictated & corrected by me and pronounced in the open court today i.e. on 4th August, 2014.

Special Judge,C.B.I., Court No.IV,
Bhubaneswar

HEARING ON THE QUESTION OF SENTENCE

I heard the convict, learned defence counsel as well as the learned Public Prosecutor on the point of sentence. The learned defence counsel submits that lenient view should be taken against the fact taking into consideration of the circumstances of the case. The learned Public Prosecutor, on the other hand, urges that the convict deserves exemplary and condign punishment.

Therefore, regard being had to the age of the convict and other mitigating factors and extenuating circumstances, I am disposed to hold that the convict should be dealt with leniently. Resultantly, the convict is sentenced to undergo rigorous imprisonment for One year and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) in default to suffer rigorous imprisonment for three months for the offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The period undergone as UTP be set off under Sec.428 Cr.P.C.

The seized documents be returned from whom seized and zimnama, if any, be cancelled four months after the appeal period is over, if no appeal is preferred and in the event of an appeal subject to the order of the Hon'ble Appellate court.

Special Judge, C.B.I. Court No.IV,
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 28th day of May, 2016.

Special Judge (CBI), Court No.IV,
Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	Ranjit Kumar Mohanty.
PW-2	Banka Bihari Panda.
PW-3	Babaji Charan Behera.
PW-4	Tareswar Patra.
PW-5	Man Mohan Pattnaik.
PW-6	Rama Hari Sahu.
PW-7	Smt. Padmini Guru.
PW-8	Arun Kumar Dash.
PW-9	Jeetendra Kumar Bag.
PW-10	Khitish Kumar Mahalik.
PW-11	Gouranga Patra.
PW-12	Jami Laxman Murthy.
PW-13	Hrudaya Suna.
PW-14	Rabi Narayan Pujari.
PW-15	Susanta Kumar Dash.
PW-16	Sankarsan Pradhan.
PW-17	Sudhakar Samal.
PW-18	Binod Kumar Pattnaik.
PW-19	Suresh Kumar Panigrahi.
PW-20	Jayanta Kumar Mohanty.
PW-21	Gokul Chandra Singh.
PW-22	Chandramani Jali.
PW-23	Sansara Nag.
PW-24	Anil Kumar Keshwani.
PW-25	Lalit Mohan Lohani.
PW-26	Aswini Kumar Das.
PW-27	Bhabani Kanta Pattnaik.
PW-28	Narahari Gahir.
PW-29	Bhakti Pada Mishra.
PW-30	Baidyanath Samal.

List of witnesses examined for the defence :-

DW-1	Arjun Prasad Mishra.
DW-2	Smt. Jayanti Mishra.
DW-3	Rajendra Satpathy.

List of exhibits marked for the prosecution :-

Ext.1	Cash memo.
Ext.2	Letter.
Ext.2/1	Signature of PW-2.
Ext.3	Letter of PW-3.
Ext.3/1	Signature of PW-3.
Ext.4	Letter with annexure.
Ext.4/1	Signature of PW-3.
Ext.5	Declaration.
Ext.6	Copy of deposit voucher.
Ext.6/1	Challan.

Ext.7	Deposit voucher.
Ext.8	Information.
Ext.8/1	Signature of PW-5.
Ext.9	IT Returns.
Ext.10	Forwarding letter.
Ext.10/1	Signature of PW-6.
Ext.11	Salary statement.
Ext.11/1	Letter.
Ext.11/2	Signature of PW-7.
Ext.11/3	Signature of D.I.
Ext.11/4	Forwarding letter.
Ext.11/5	Signature of N.K.Purohit.
Ext.12	Statement.
Ext.12/1	Signature of PW-8.
Ext.13	Statement.
Ext.13/1	Signature of PW-8.
Exts.14 & 15-	Computer generated statements.
Ext.14/1 & 15/1	-Certificates.
Ext.16	Deposit slip.
Ext.16/1	Signature of K.S.Mishra.
Ext.16/2	Advice.
Ext.17	Receipt.
Ext.18	Deposit receipt.
Ext.18/1	Signature of K.S.Mishra.
Ext.18/2	Advice.
Ext.19	Receipt.
Ext.20	Information.
Ext.20/1	Certificate.
Ext.21	Forwarding letter.
Ext.21/1	Signature of R.K.Sahu.
Ext.22	Information.
Ext.22/1	Signature of PW-11.
Exts.23 & 24 -	Copies of Policy Bonds.
Ext.25	Certified copy of statement of loan.
Ext.26	Deposit voucher.
Ext.26/1	Signature of accused.
Ext.27	Counterfoil.
Ext.28	Deposit voucher.
Ext.28/1	Signature of K.S.Mishra.
Ext.29	Counterfoil.
Ext.30	Deposit slip.
Ext.30/1	Signature of K.S.Mishra.
Ext.31	Counterfoil.
Ext.32	Deposit voucher.
Ext.32/1	Signature of K.S.Mishra.
Ext.33	Counterfoil.
Ext.34	Deposit voucher.
Ext.34/1	Signature of K.S.Mishra.

Ext.35	Counterfoil.
Ext.36	Deposit voucher.
Ext.36/1	Signature of K.S.Mishra.
Ext.37	Counterfoil.
Ext.38	Money receipt.
Ext.38/1	Signature of A.Kumbhar.
Ext.39	Miscellaneous Cash Book.
Ext.40	Letter.
Ext.40/1	Signature of PW-14.
Ext.41	Information letter.
Ext.41/1	Signature of PW-14.
Exts.42,42/1-	Letters.
Ext.43	Information.
Ext.43/1	Signature of PW-14.
Ext.44	Status report.
Ext.45	Premium history.
Ext.46	Seizure list.
Ext.46/1	Signature of PW-14.
Exts.47,48 -	NSCs.
Exts.49 to 49/6 -	Money receipts.
Ext.50	IDBI Bond.
Ext.51	ICICI Bond.
Ext.52	Seizure list.
Ext.52/1	Signature of PW-14.
Ext.53	Cash memo.
Ext.54	Information.
Ext.54/1	Signature of PW-14.
Ext.55	Details of deposit.
Ext.56	Information.
Ext.56/1	Signature of PW-14.
Ext.57	List of cash collection.
Ext.58	Letter.
Ext.58/1	Signature of PW-15.
Ext.59	Affidavit.
Ext.60	Affidavit.
Exts.61 & 62 -	Form Nos.29 and 30.
Ext.63	Letter of information.
Ext.63/1	Signature of PW-15.
Exts.64,65 -	Copy of Registers.
Ext.66	Forwarding letter.
Ext.66/1	Signature of PW-16.
Ext.66/2	Signature of PW-17.
Ext.66/3	Signature of wife of accused.
Ext.67	Statement of accounts.
Ext.67/1	Certificate by PW-18.
Ext.68	Letter.
Ext.68/1	Signature of PW-18.
Ext.69	Seizure list.

Ext.69/1	Signature of PW-19.
Exts.70 to 70/12	Fixed deposit certificates.
Ext.71	Letter dated 28.3.2006.
Ext.71/1	Signature of PW-19.
Ext.72	Statement of account.
Ext.73	Letter dated 23.3.2006.
Ext.73/1	Signature of PW-20.
Exts.74 to 86 -	Fixed deposit slips.
Exts.87 & 88 -	Vouchers.
Ext.89	Cash transfer voucher.
Ext.90	Letter dated 21.4.2006.
Ext.90/1	Signature of PW-21.
Ext.91	Certified copy of statement of account.
Ext.91/1	Signature of PW-21.
Ext.92	Forwarding letter.
Ext.92/1	Signature of PW-22.
Ext.93	Statements (Five sheets).
Ext.94	Forwarding letter.
Ext.94/1	Signature of PW-22.
Ext.95	Statement of account.
Ext.96	Information.
Ext.96/1	Signature of PW-23.
Ext.60/1	Signature of PW-24.
Ext.59/1	Signature of accused Krupasindhu Mishra.
Ext.97	Sanction order.
Ext.97/1	Signature of PW-25.
Ext.98	Paper containing specimen signature and handwriting of K.S.Mishra (Eight sheets).
Ext.98/1	Signature of PW-26.
Ext.99	FIR.
Ext.99/1	Signature of Pranab Mohanty.
Ext.99/2	Report.
Ext.99/3	Signature of PW-27.
Ext.100	Deposit challan.
Ext.100/1	Signature of K.S.Mishra.
Ext.100/2	Endorsement of T.Patra.
Ext.100/3	Signature of T.Patra.
Ext.101	Forwarding letter containing 3 pages to SP, CBI, Bhubaneswar.
Ext.101/1	Signature of Sri S.C.Gupta on Ext.101.
Ext.102	Opinion No.DXC-281/06.
Ext.102/1	Signature of PW-29 on Ext.102.
Ext.102/2	Signature of Sri S.C.Gupta on Ext.102.
Ext.103	Forwarding letter signed by Sri V.G.S Bhatnagar.
Ext.103/1	Signature of Sri V.G.S.Bhatnagar on Ext.103.
Ext.104	Deposit slip for Rs.45,000/- of LIC.
Ext.105	Opinion dated 14.8.2006.

Ext.105/1	Signature of PW-29 on Ext.105.
Ext.101/2	Signature of PW-30 in Ext.101.
Ext.101/3	Signature of SP, CBI Sri P.Mohanty on Ext.101.
Ext.46/2	Signature of PW-30 in Ext.46.
Ext.52/2	Signature of PW-30 on Ext.52.
Ext.69/2	Signature of PW-30 on Ext.69.
Ext.66/4	Signature of PW-30 on Ext.66.
Ext.106	Letter dated 15.5.2006 of Executive Engineer, WESCO.
Ext.107	Letter dated 10.12.2005 of LIC.

List of exhibits marked for the defence :-

Ext.A	Copy of the information reply letter.
Ext.B	Copy of charge report.
Ext.C	Report regarding C.L.
Ext.D	Land pass book having Sl.No.071/11 issued on 31.7.07 in favour of DW-1.
Ext.E	Affidavit sworn before Notary Public, Bolangir on 4.4.2016 by DW1.
Ext.F	Certified copy of ROR of DW-2.
Ext.G	Certified copy of current ROR.

List of M.Os. marked for the prosecution :-

Nil.

List of M.Os. marked for the defence :-

Nil.

Special Judge (CBI), Court No.IV,
Bhubaneswar.