IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Writ Petition No. 1778 of 2010 (M/S)

Hyundai Heavy Industries Ltd. ..…… Petitioner

Versus

The Union of India and others …… Respondents.

Hon'ble Tarun Agarwala, J.

The petitioner is basically aggrieved by the constitution of the Dispute Resolution Panel envisaged u/S 144C of the Income Tax Act and, has consequently, filed the present writ petition challenging the vires of Section 144C of the Income Tax Act as well as Rule 3 (2) of the Income Tax (Dispute Resolution Panel) Rules, 2009.

The facts leading to the filing of the present writ petition is, that the petitioner is a foreign company established under the laws of Korea and is engaged in the business of offshore engineering construction and power projects in India. The petitioner is doing various business with the public sector undertakings including Oil and Natural Gas Corporation Limited. The petitioner contends that it has a liaison office at Mumbai and since 1987-88, assessment orders are being passed by the Assessing Officer. It is alleged that the assessment orders for the assessment years 1987-88 onwards revolved on two basic issues, namely, whether or not the Mumbai office was a permanent establishment in India and whether or not the income derived from the work carried outside India was taxable in India. These issues were finally settled by the Supreme Court for the assessment year 1987-88 and 1988-89 holding that the Mumbai Office was not a permanent establishment and that the revenue derived from the activities carried outside India was not taxable in India.

The petitioner contends that inspite of the decision of the Apex Court, the Income Tax Officer continued to levy the tax. The petitioner contended that for the assessment years 2002-03 and 2004-05, the petitioner succeeded before the Income Tax Appellate Tribunal on the aforesaid two issues. The Income Tax Deptt. did not file any appeal u/S 260 (A) of the Act before the High Court and instead initiated the assessment proceeding u/S 147 and 148 of the Act on the ground that income chargeable to tax had escaped assessment.

Pursuant to the issuance of notice u/S 147 and 148 of the Act, the Assessing Officer forwarded a draft of the proposed assessment for the assessment years 2002-03, 2004-05, 2005-06, 2006-07 and 2007-08. The petitioner, being aggrieved by the draft assessment orders, approached the Dispute Resolution Panel (hereinafter referred to as the 'Panel') and filed its

objection and, during the pendency of the proceedings before the Panel, came to know that one of the members of the collegium was a Commissioner presently holding the post of Director of Income Tax (International Taxation)-II (hereinafter referred to as DIT-II), who was ceased of various proceedings against the petitioner. It was contended that the DIT-II had exercised his power granting approval for the re-assessment for the assessment years 2003-04, 2005-06 and 2006-07 u/S 148 of the Act. The petitioner consequently orally objected to the constitution of the collegium and submitted that there was a conflict of interest if the DIT-II continues to sit in the collegium since he was involved in the reassessment proceedings. Inspite of the oral objection, the DIT-II did not recuse himself and participated in the proceedings and finalised the draft assessment order. The Panel without considering the objection of the petitioner issued orders to the Assessing Officer by its order dated 30th September, 2010 for the assessment year 2002-03, 2004-05, 2005-06 and 2007-08. The petitioner, being aggrieved by the aforesaid orders, has filed the present writ petition challenging the vires of Section 144C of the Act as well as Rule 3 (2) of the Rules and has also prayed for the quashing of the order dated 30th September, 2010 passed by the Panel. In the alternate, the petitioner has prayed that the provision of Section 144C should be read down so that there is no conflict of interest.

Heard Mrs. Shashi M. Kapila, the learned counsel with Mr. O.P. Sapra, Mr. P.R. Mullick, Mr. Siddharth Kapila, Miss Charu Kapoor, the learned counsel for the petitioner and Mr. Mohan Parasaran, the learned Additional Solicitor General of India with Mr. Zoheb Hussain, Mr. Arvind Vashisth, the learned Counsel for the respondent Nos. 1 and 2.

The learned counsel for the petitioner submitted that the Dispute Resolution Mechanism was envisaged as an alternative to the forum of Commissioner Appeals for the purpose of resolution of dispute arising out of the variation proposed by the Assessing Officer. Section 144C of the Act was brought into the Act so that the time consuming process was shortened for high profile cases and to bring finality to the litigation of multi national companies. The learned counsel submitted that the Dispute Resolution Mechanism evolved u/S 144C of the Act was an alternate judicial forum for adjudicating legal as well as factual disputes between the assessee and the Assessing Officer. The learned counsel submitted that the function of the Panel was judicial in nature and, for effective administration of justice, the Panel was required to have certain autonomy, impartiality and fair play in the discharge of their judicial functions.

In the light of the aforesaid, the learned counsel for the petitioner submitted that the Commissioner of the Income Tax under the Act is expected to work in the best interest of the Deptt. both as an administrative head as well as the revenue collecting head. The Commissioner also exercises statutory function of filing appeals on behalf of the department and is also involved in filing counter affidavits on behalf of the Deptt. before the superior court. The Commissioner also reviews orders of the subordinate Assessing Officer which orders could be prejudicial to the interest of revenue. The Commissioner also has the power for re-opening the assessment order where he has reason to believe that income chargeable to tax had escaped assessment.

The learned counsel for the petitioner further submitted that where such a Commissioner operates as a member of the Panel, he becomes the judge of his own cause. His independent mindedness and impartiality in the discharge of his judicial functions gets coloured by his regular statutory functions as a Revenue Officer. The learned counsel for the petitioner submitted that this conflict of interest is in clear violation of the principle of natural justice, vis-à-vis, the Rule against bias enshrined in the dictum "nemo judex in sua causa" which means that no one can be judge in his own cause.

The petitioner in order to prove bias has elucidated the matter in the petition and submitted that the Commissioner of Income Tax is required to discharge the following functions under the Income Tax, namely, :

"i. Under section 253(2) of the Act, the Commissioner is expected to direct revenue /assessing officer working under him to lodge appeals on behalf of the Tax Department to the Income Tax Appellate Tribunal against any order passed by the Commissioner of Income Tax (Appeals) on any issues decided against the income tax department.

ii. Under section 260A(2) of the Act, the Commissioner is required to institute appeals before the High Court against any orders which are adverse to the Revenue Dept. passed by the Income Tax Appellate Tribunal on all/any issues decided against the income tax department.

iii. Under section 147/148 read with proviso to section 151 of the Act, the Commissioner accords approval for reopening of tax assessment in cases where the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment.

iv. Section 263 of the Act empowers the Commissioner to revise an assessment which he considers to be erroneous and prejudicial to the interest of the revenue.

v. Under section 264 of the Act, an assessee aggrieved by an assessment order has a right to file a petition with the jurisdictional Commissioner to review an order which is prejudicial to him."

The learned counsel further submitted that as a member of the Panel, the Commissioner is required to examine the draft assessment order with an independent and impartial mind, but the same Officer who had taken a decision adverse to the assessee when he sits as a member of the collegium and decides to judge the very same issues brings into forth the rule against bias.

In the light of the aforesaid, the learned counsel submitted that sub-section (14) of Section 144C of the Act provides that for the purposes of the efficient functioning of the Panel, the Central Board of Direct Taxation would make appropriate Rules. Rule (2) provides for the constitution of the members of the collegium. The learned counsel for the petitioner submitted that in the absence of proper guidelines, the taxing statue delegating power to the Central Board of Direct Taxation is wholly arbitrary and ultravires of Article 14 and Article 19 of the Constitution of India. The learned counsel submitted that Rule 3 (2) of the Rules leads to an inherent conflict of interest in discharging the function of the regular Commissioner as well as being a member of the Panel, especially, when a jurisdictional Commissioner is nominated as a member of the Panel which makes the independence of the Panel questionable since the jurisdictional Commissioner supervises the draft assessment and, thereafter, becomes a member of the Panel to judge the said assessment order and, consequently, there is a conflict of interest which leads to the invocation of bias. The learned counsel further submitted that in the light of the aforesaid, Rule 3 (2) in its present form is inherently flawed and is ultravires the Constitution and is liable to be struck down. In the alternative, the learned counsel submitted that the provision of Rule 3 (2) of the Rules should be read down to ensure that the jurisdictional Commissioner is not nominated as a member of the Panel so that the functioning of the Panel remains independent and unbiased.

The basic ground which emerges from the submission of the leaned counsel for the petitioner is that the jurisdictional Commissioner should not be nominated as a member of the Panel, in as much as, in the case of the petitioner, the jurisdictional Commissioner, namely, the DIT-II had granted approval for initiating reassessment proceedings u/S 147 and 148 of the Act and that the draft assessment orders were made under the supervisory aegis of the jurisdictional Commissioner. The submission of the learned counsel is, that the jurisdictional Commissioner, being the overall jurisdictional head had, exercised supervisory / directory functions in getting the draft

assessment orders prepared by the Assessing Officer and, thereafter, the very same jurisdictional Commissioner functioned as a member of the collegium of the Panel and examined the draft assessment orders and, thereafter, had given directions to the Assessing Officer, thereby making the jurisdictional Commissioner, a judge in his own cause.

The respondent has filed a Counter affidavit indicating that Section 144C of the Act could not be declared ultravires on the ground of bias against one of the members of the Panel and that mere potential for bias or potential for abuse of power could not render the provision unconstitutional. The learned counsel submitted that on the allegation of bias against a member of the Panel, the petitioner could challenge the legality of the Constitution of the collegium. The respondents contended that there is no conflict of interest and that the role of DIT-II was only supervisory in nature and it did not involve any pre-determination of issues. The Counter affidavit categorically states that the person holding the office of DIT-II at the time of granting approval of reassessment was a different person from the person who sat on the Panel as DIT-II who gave directions to the Assessing Officer alongwith other members of the Panel. It was categorically stated that Shri Virendra Singh, Director (International Taxation]-II was a member of the Panel who gave direction on the draft order and that Sunil Ojha was the Director [International Taxation]-II who gave approval for reassessment of the cases u/S 147 and 148 of the Act. The respondent consequently contended that the question of personal bias in the said facts and circumstance of the present case did not arise nor any legal bias appeared. It was further contended that the DIT-II was only discharging its statutory functions provided under the Act and, therefore, the bias stood excluded. The respondents contended that the principles of natural justice and fair play had not been violated nor there is a conflict of interest. The mere fact that DIT-II had exercised his supervisory powers does not mean that there exists a bias

The learned Additional Solicitor General Shri Mohan Parasaran for the respondents further submitted that even though the petition has challenged the vires of Section 144C of the Act, no challenge has been made to the vires of Rule 3 (2) of the Rules nor there is any specific prayer in the prayer clause for declaring Section 144C of the Act or Rule 3 (2) of the Rules as ultravires the Constitution and, consequently, the Court should reject the submission of the learned counsel for the petitioner at the threshold itself.

The factual averment made by the respondents in their counter affidavit has not been denied by the petitioner since no rejoinder affidavit has been filed, namely, that the jurisdictional Commissioner who had approved initiation of reassessment proceedings u/S 147 and 148 of the Act was a different person

from the person who sat as a member of the Panel. In the light of the aforesaid admitted position, it is clear that there exists no personal bias. The only question which is to be considered is whether there exists a legal bias or not.

In order to appreciate the controversy, it would be appropriate to peruse Section 144C of the Act and Rule 3(2) of the Rules.

The Government found that the dispute relating to the foreign companies were not being resolved and that the existing dispute resolution mechanism was consuming a lot of time and finality in high demand cases was being done after long drawn litigation which went upto the Supreme Court. In order to address this issue relating to multi-national companies and to provide a mechanism for speedy disposal of the cases so as to attain finality, a new Section 144C was inserted under the Income Tax Act in the year 2009 to facilitate expeditious disposal of the dispute. For facility, the provision of 144C of the Income Tax Act is extracted hereunder :-

"Reference to dispute resolution panel"

144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,-

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,-

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if-

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,-
(a) the acceptance is received; or
(b) the period of filing of objections under sub-section (2) expires.
(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:-

a) draft order;

b) objections filed by the assessee;

c) evidence furnished by the assessee;

d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

e) records relating to the draft order;

f) evidence collected by, or caused to be collected by, it; and

g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub- section (5),-
(a) make such further enquiry , as it thinks fit; or (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.
(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under subsection (5) for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.
(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.
(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.
(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.
(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(15) For the purposes of this section, -

(a) “Dispute Resolution Panel” means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;
(b) “eligible assessee” means,-
(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
(ii) any foreign company.”
This Section is a beneficial piece of legislation, inasmuch as, it provides that after a regular assessment u/S 143 (3) of the Act and / or after re-assessment u/S 147 and 148 of the Act, the petitioner has an option to either file an appeal before the Commissioner of Income Tax Appeals u/S 146A or to file an objection before the Panel which is provided u/S 144C. This provision was introduced in order to minimize the litigation of foreign companies.
Sub-Clause (15) of 144C indicates that the Dispute Resolution Panel means a collegium comprising of three Commissioner of Income Tax constituted by the Board. The Section provides that an Assessing Officer will forward

the draft of the proposed assessment to the assessee who, if he accepts the draft assessment order, in which case, the assessment would be finalized by the Assessing Officer. If the assessee objects to the draft assessment, he may file his objection before the Panel. Once the matter comes up before the Panel, the Panel would issue such directions as it thinks fit to the Assessing Officer after providing an opportunity of hearing to the assessee. The Assessing Officer would pass the assessment order on the basis of the directions given by the Panel. Once the assessment order is passed, it would be open to the assessee to file an appeal before the Tribunal.

Pursuant to Sub-clause (14) of Section 144C of the Act, the Income Tax (Dispute Resolution Panel) Rules, 2009 were framed (hereinafter referred to as Rules). Rule 3 (2) of the said Rules is extracted hereunder:-

"(2) The Board shall assign by name three Commissioners of Income Tax to each panel as Members who, in addition to their regular duties as Commissioners, shall also carry on the functions of the panel."

In pursuance of Rule 3 (2) of the Rules, the Board issued an Order No. 1 of 2010 dated 10.02.2010, nominating members of the Dispute Resolution Panel. In the case of the petitioner, for Delhi DRP-II, the following members were nominated, namely, Sri S.C. Joshi CIT-III Delhi, Sri Hari Krishna CIT-V, Delhi and Sri Virendra Singh DIT (Intl. Tax)-II, Delhi. The petitioner is aggrieved by the appointment of Sri Virendra Singh, DIT (Intl. Tax)-II Delhi who is also the jurisdictional Commissioner.

Under the aforesaid Rule 3 (2) of the Rules, the Commissioner designated to operate as a Member of the collegium comprising the Panel was also expected to continue to perform his regular statutory duties as Commissioner as envisaged under the Income Tax Act, 1961.

Having heard the learned counsel for the parties, the Court finds that the rule of natural justice can operate only in areas not covered by any law validly made. The rules of natural justice can supplement the law but cannot supplant it as held by the Supreme Court in **Kraipak (A.K.) Vs. Union of India AIR 1970 SC 150.** Similarly, in **Swadeshi Cotton Mills Co. Ltd. Vs. Union of India AIR 1981 SC 818,** the Supreme Court held that if a statutory provision either specifically or by inevitable implication excludes the application of rules of natural justice, in that case, the Court could not ignore the mandate of the Legislature. The Supreme Court held that whether or not the application of the principle of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and the basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power.

In **Union of India Vs. Tulsiram Patel, AIR 1985 SC 1416,** the Supreme Court held:-

"Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity."

In **Union of India and others Vs. Vipan Kumar Jain and others, [2003] 260 ITR 1,** the Supreme Court held that there was nothing unconstitutional in permitting the Assessing Officer to gather information relating to an assessee and to assess the value of the information himself. The Supreme Court held that Sections 120, 124, 131 (1), 132(8), (9A), 133A, 133B and 142 of the Income Tax Act indicates that the Assessing Officer by virtue of his appointment or authorization by a superior authority under the Act had been given the power of gathering information for the purpose of assessment. These Sections imposes no limitation on the Assessing Officer and the authorized Officer for a search being the same person and it could not be said that action taken pursuant to such statutory empowerment was coloured by reasons of bias. The Supreme Court held that the bias could not be established merely because the authorized officer u/S 132 and the Assessing Officer was one and the same person. The Supreme Court further held that the question of bias has to be decided on the facts of each case and that if the assessee was able to establish that the Assessing Officer was infact biased in the sense that he was involved or interested in his personal capacity in the outcome of the assessment or the procedure for assessment, in which case, it would be a good ground for setting aside the assessment order but not otherwise.

In **T. Govindaraja Mudaliar Etc. Vs. The State of Tamil Nadu and others, (1973) 1 SCC 336,** the Secretary Home was a member of the Committee which submitted a report. Thereafter, the schemes were published u/S 68-C of the Motor Vehicles Act. Objections were filed by the operators which objections were considered by the Secretary Home u/S 68-D. The Secretary Home while hearing the objection u/S 68-D was acting as a quasi judicial member. Since, he was a member of the Committee which had made the report in accordance on the basis of which the scheme was published u/S 68-C, it was alleged that the Secretary Home had acted as a judge in his own cause. In other words, it was alleged that the Secretary Home participated in the policy decision of the Government and then exercised his power u/S 68-D by hearing the objections and considered the merits of the scheme. The Supreme Court held that it cannot be a case where

the Secretary Home acted as a judge in his own cause and that the report submitted by the Committee was not final or irrevocable and that it was only a policy decision and, therefore, the question of bias did not exist.

In **Subhash Chandra Gupta Vs. The State of Uttar Pradesh and another, 1981 (7) AWC 436,** the Division Bench of the Allahabad High Court held as under :-

"Legal mala fides or legal malice are to be distinguished from personal bias or personal malice. An authority on whom power has been conferred may act honestly and with the best of motives. In such a case, it cannot be said that it is guilty of any personal bias or personal vice. However, if the action taken by such authority is based on extraneous considerations, which are wholly irrelevant for the purpose for which power has been conferred upon it, the resultant action would be hit by the doctrine of legal bias or legal malice."

In **Election Commission of India and another Vs. Dr. Subramaniam Swamy and another (1996) 4 SCC 104,** the Supreme Court held as under:-

"We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief. Election Commissioner to participate, if not the doctrine of necessity may have to be he invoked."

In the light of the aforesaid, the Court finds that the doctrine of nemo judex in causa sua is subject to the doctrine of necessity. Bias cannot be established merely because one of the members of the Panel is also a jurisdictional Commissioner. In the present case, there is nothing to indicate

that the jurisdictional Commissioner was interested in his personal capacity in the outcome of the assessment order. Further, there is nothing to indicate that the directions issued by the Panel to the Assessing Officer was based on extraneous considerations. The Commissioner is required to discharge certain functions under the Act. He exercises his power impartially and with an independant mind. Such exercise of statutory functions does not get coloured when a member of a Panel issues directions to the Assessing Officer.

DIT-II was only discharging its statutory functions provided under the Act and, therefore, on the principles of the doctrine of necessity, bias stood excluded. There is no violation of the principles of natural justice. The law permits certain things to be carried out as a matter of necessity. The doctrine of necessity makes it imperative for the authority to carry out its statutory functions and if the doctrine of necessity is not allowed full play in certain situations, it would impede the course of justice.

The contention of the petitioner that Section 144C of the Act and Rule 3 (2) of the Rules should be declared ultravires is patently erroneous. Mere potential of bias against one of the members of the Panel will not render the provision unconstitutional. The Court finds that in the facts and circumstances of the case, there is no conflict of interest. Alleged bias against one member of the Panel does not make the provision ultravires. Even though, no specific prayer for the quashing of Section 144C of the Act and Rule 3 (2) of the Rules, was made in the petition, the Court has dwelt on it since long drawn arguments were made.

In the light of the aforesaid, the Court does not find that the provision of Section 144C of the Act and Rule 3 (2) of the Rules is ultravires. The contention of the petitioner on this issue is rejected.

The Court finds that the jurisdictional Commissioner is one of the members of the Panel. He is the officer who approves the reopening of the assessment orders and issues directions to the Assessing Officer, which according to the averments in the counter affidavit, are supervisory in nature. The respondents admit that in the exercise of statutory functions, the Officer could have an “official bias” towards the department to which he is attached and that it is extremely difficult to insulate the officials discharging adjudicatory functions completely from “policy bias”.

In view of the aforesaid, it is to be noted that the DIT-II is exercising supervisory functions and has a hand in the reopening of the assessments u/S 147/148 of the Act and is also a member of the Panel considering the draft assessment which has been made pursuant to the reopening of the assessment. Therefore, real likelihood of bias cannot be ruled out. Even if

the officer is impartial and there is no personal bias or malice, nonetheless, a right minded person would think that in the circumstances, there could be a likelihood of bias on his part. In that event, the officer should not sit and adjudicate upon the matter. He should recuse himself. This follows from the principle that justice must not only be done but seen to be done.

In **S. Parthasarathi Vs. State of A.P, (1974) 3 SCC 459,** the Supreme Court observed:-

16. The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision."

In **Metropolitan Properties Co. (FGC) Ltd. Vs. Lannon, (1968) 3 WLR 694**, Lord Denning, M.R. observed:

“In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does it, his decision cannot stand; see R. v. Huggins (8), Sunderland justices (9), per Vaughan Williams, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough; see R. v. Camborne Justices, ex parte Pearce (10); R. v. Nailsworth Justices, ex parte Bird (11). There must be circumstances from which a reasonable man would think it likely or probable that the justice, or Chairman, as the case may be, would, or did, favour one side unfairly at the expenses of the other. The court will not enquire whether he did, in fact,

favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking; The Judge was biased."

In view of the aforesaid, the writ petition fails and is dismissed. Before parting, in order to ensure that no person should think that there is a real likelihood of bias on the part of the officer concerned, the Court directs the CBDT to ensure that a jurisdictional Commissioner is not nominated as a member of the DRP under Rule 3 (2) of the Rules. By doing this, the principle that justice must not only be done but seen to be done would be ensured.

The Court further finds that cost of Rs.50,000/- as directed by the Court, by an order dated 05/04/2011 has not been deposited by the respondents. It is made clear that if the aforesaid amount is not deposited within four weeks from today, it would be open to the Registrar General to recover the same from the respondents as arrears of land revenue. The Registry is directed to place a copy of the order before the Registrar General for necessary information and direction within a week.

(Tarun Agarwala, J.)

Dated 21st July, 2011

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