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April 15, 2011.

**Dr. Manmohan Singh,
Prime Minister & Designated
Authority u/s 19 of PCA,
South Block,
New Delhi.**

Dear Prime Minister:

I am enclosing with this letter my application for Sanction to prosecute
Ms Sonia Gandhi, currently Chairperson of the National Advisory Council,
Government of India.

Please note that under the directions of the Supreme Court given in various
judgments, you have to decide the matter yourself only, and grant or deny
Sanction. That is, you and you alone have to apply your mind, only to the materials
I have supplied in the letter and annexures, and decide within three months from
today if it has a prima facie basis for initiating the criminal law. You cannot send
this application and letter to Ms. Sonia Gandhi since there is no lis, nor to anybody
else for an opinion, or call for records to help you make up your mind.

Warm Regards

Yours sincerely,

(SUBRAMANIAN SWAMY)

Encl: a/a

To

**Dr. Manmohan Singh
Prime Minister in capacity
As Designated Authority
U/s 19 Prevention of Corruption Act,
South Block, New Delhi-110011.**

\From:

**Dr. Subramanian Swamy,
Former Union Cabinet Minister of
Commerce, Law & Justice,
President, Janata Party,
A-77, Nizamuddin East,
New Delhi-110013.
(swamy39@gmail.com)**

**Re: Grant of Sanction to
Prosecute Ms. Sonia Gandhi
Chairperson, National Advisory Council,
Government of India,
2, Motilal Nehru Place,
New Delhi-110011.**

Dated: April 15, 2011.

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15, April 2011

Dr. Manmohan Singh
Prime Minister as Sanctioning Authority
u/s 19 of the Prevention of Corruption Act (1988) [PCA]
South Block, New Delhi.

**Re: Sanction to prosecute Ms. Sonia Gandhi, Chairperson (in Cabinet Rank),
NAC, under Prevention of Corruption Act (1988).**

Dear Sir:

1. Ms. Sonia Gandhi MP, wife of the deceased Rajiv Gandhi, was first appointed as Chairperson National Advisory Council [NAC] in May 2004. She resigned in 2006 but was re-appointed by an Order of the Cabinet Secretariat dated March 29, 2010, read with Order dated October 8, 2010 [Annexure 1].
2. As per Order of May 31, 2004 [Annexure 2] the Prime Minister's Office will provide Central Government funds to meet the expenditure of the NAC, and service the NAC for its secretarial needs. Hence she is a public servant as defined in Section 2 (c) of the Prevention of Corruption Act (1988).
3. You, in your capacity as deemed appointing authority are therefore the Designated Authority under Section 19 of the Prevention of Corruption Act for granting Sanction to prosecute the said Ms. Sonia Gandhi. As you know, there are no laches or statute of limitations for prosecuting offences of corruption.
4. Your Sanction is required by me for prosecuting Ms. Sonia Gandhi on a private complaint proposed to be filed by me in the criminal court under Prevention of Corruption Act (1988).

based on the materials available to me (and enclosed with this letter/application) with reference to two issues:

FIRST ISSUE:

5. Ms.Sonia Gandhi holds office which enables her to give direction to Government departments and Ministries and also call for confidential reports from CBI, and according to the then Union Law Minister, she can even call for files [Annexure 3]. She has been as Chairperson of NAC giving directions to several ministries and departments.
6. It is charged that she obtained for, and colluded with family friend, Mr. Ottavio Quattrocchi—an Interpol Red-Corner Noticee & a proclaimed offender under Indian criminal law, to obtain for him the pecuniary advantage from defreezing of his CBI-frozen account, thus committing offence u/s 13 (1)(d) of the PCA, and also conspired with Quattrocchi to enable him to escape prosecution in Bofors Gun Purchase scam.
7. Bofors scam that occurred in 1986 represents corruption in very high places and the key figure in the scam is Mr. Ottavio Quattrocchi, the Italian family friend and fixer. The then Prime Minister, Rajiv Gandhi was manipulated by Ms.Sonia Gandhi, his Italian born wife, to abet the crime in Bofors gun purchase committed by Quattrocchi against the nation.
8. Ms.Sonia Gandhi stationed Mr.Walter Vinci, her brother-in-law, in Sweden to influence her husband and then Prime Minister, when on a visit to Sweden to finalize the Bofors Deal. Also present in the same hotel was the Italian fixer, small arms supplier, and Snam Progetti agent, Mr. Ottavio Quattrocchi, [who was hailed as the catalyst in the deal by the CBI in their Letters Rogatory documents], and who had in return for a hefty commission prevailed on the Prime Minister to sign the deal before March 31, 1986.

9. Thereafter when the arm of the law began reaching near him, he escaped from India in 1993, then from Malaysia in 2002 via a rigged court judgment obtained by collusion with as yet unnamed parties and from Argentina—by the CBI fudging the records—all achieved under the influence exerted by Ms. Sonia Gandhi under three different and consenting Prime Ministers.
10. This is further confirmed in the interview conducted by Ranjit Bhushan of Outlook magazine [Annexure 4] in 1998 with Mr. Sten Lindstorm, the Chief of the Investigation Division of Swedish National Bureau of Investigation and Special Prosecutor, of the Swedish Government into the Bofors payoffs. The Swedish National Audit Bureau which he assisted concluded after an independent probe that bribes had indeed been paid in the Bofors deal.
11. Lindstorm states in the interview, which has not been contradicted by anyone including Ms. Sonia Gandhi, that: “The Bofors Papers all point to the [Sonia] Gandhi family” and further that Ms. Sonia Gandhi should “explain how Quattrocchi-owned companies got such fat sums as payoffs from the Bofors deal.”
12. This report is corroborated by another interview given by Lindstorm to Chitra Subramanian [Indian Express, March 22, 1998] wherein he stated; “All information we had at that time pointed to the Gandhi link—Sonia Gandhi should place her cards on the table. The bribes have been traced to her friend and this is not something out of the blue. This is no coincidence.”
13. *Headlines Today* is in possession of the written statement of then Intelligence Bureau officer Naresh Chandra Gosain made before CBI Inspector Ghanshyam Rai on March 29 1997. Between 1984 and 1987, Gosain was posted in the Special Protection Group [SPG] of the then Prime Minister Rajiv Gandhi. He was part of the escort team. Between 1987 and 1989, Gosain served as the Personal Security Officer or the PSO of Sonia Gandhi.

14. During the tenure of Prime Minister Deve Gowda in 1997, Gosain deposed before the CBI. This deposition has so far never been made public. *Headlines Today* dug out this deposition, in which Gosain talks at length about the close family ties between the Gandhis and the Quattrocchis.
15. In his testimony Gosain says, "Mr. Ottavio Quattrocchi and his wife Ms Maria Quattrocchi were very close to Mr Rajiv Gandhi and Mrs Sonia Gandhi. When Shri Rajiv Gandhi became Prime Minister, Mr. Quattrocchi and his family members used to visit PM house and the family members of Shri Rajiv Gandhi also used to visit the house of Mr. Quattrocchi."
16. He adds: "In the initial period of Prime Ministership of Shri Rajiv Gandhi, the children of Shri Rajiv Gandhi used to stay at Mr. Quattrocchi's house during the foreign visits/domestic visits of the Prime Minister. We used to perform our shift duties at the residence of Mr. Quattrocchi on such occasions. Sometimes, Mrs Sonia Gandhi has also stayed in the house of Mr. Quattrocchi and at that time we used to perform our duties there."

Gosain goes on to add that Mr. Quattrocchi and his wife Maria enjoyed free access to the Prime Minister's house. "At No. 5 & 7 Race Course Road, private cars were not allowed to enter inside the bungalow. Only the ferry cars of SPG, after severe security checks, used to carry such visitors from reception to porch and back. Mr. Quattrocchi and Mrs Maria Quattrocchi were very close to Shri Rajiv Gandhi's family and they got free access to the PM's House."

He further added: "All visitors to No 5 & 7 Race Course Road were issued passes at the reception near the alighting point. Every time, a card was kept ready for Mr. Quattrocchi and his family members as and when they visited the PM's house. Everybody in SPG posted at PM house knew Mr Quattrocchi and his family members. Hence, there was no question of identifying them."

17. Ottavio Quattrocchi's proximity to the Gandhis is well known. What is also known is this proximity continued even after Quattrocchi began to be linked to the Bofors scandal. What documents show is that despite the cloud of suspicion surrounding Quattrocchi's involvement in the Bofors paybacks, he continued to have unfettered access to 10 Janpath, the residence officially assigned to Ms. Sonia Gandhi, which in itself makes her a public servant under the Prevention of Corruption Act.
18. It is important to recollect that by January 25, 1990, a team of CBI officials was already in Switzerland with a list of suspected recipients of the Bofors payback. According to a *Frontline* magazine story of the time, Ottavio Quattrocchi was the first name on that list. Between 1988 and 1990, the media too carried many stories about the involvement of Quattrocchi as a middleman in the Bofors deal.
19. It is clear from records that Mr. Quattrocchi was the direct beneficiary of bribe payments in the Bofors scam. It is now confirmed by the ITAT Report of the Hon'ble Tolani & Sharma Bench [Annexure 5].
20. The testimony of Mr. Sasi Dharan is crucial in further unravelling the proximity of Quattrocchi to Ms. Sonia Gandhi.. Sasi Dharan worked as a driver in Snam Progetti. Snam Progetti was an Italian public sector giant that was represented in India by Ottavio Quattrocchi. Sasi was Quattrocchi's personal driver. He drove Mercedes No. DIA 6253. In his testimony before the CBI, Sasi details the frequent meetings between the Gandhis with the Quattrocchis.
21. In his testimony Sasi says: "Shri Quattrocchi and Mrs Maria Quattrocchi were very close to Shri Rajiv Gandhi, Sonia Gandhi and his family. I do not know what type of relation they

had but Quattrocchi and his wife Maria used to frequently visit the house of Rajiv Gandhi and Sonia Gandhi. I knew it since 1985 when I joined service. At that time they used to visit the house of Rajiv Gandhi twice or thrice in a day. Whenever Sonia Gandhi's mother or father visited India, I used to drive them to the house of Quattrocchi. They used to remain there for the whole day and Mrs Maria Quattrocchi would take them for shopping. They used to come to India four or five times in the year."

22. What is clinching is the car log maintained by driver Sasi Dharan. In this log, Sasi details the exact dates when Ottavio Quattrocchi came to meet Rajiv and Sonia Gandhi at 5 and 7 Race Course Road or 10 Janpath. These logs are for the period 1989 to 1993. In this log book, Sasi Dharan has mentioned 41 occasions when Quattrocchi came to meet the Gandhis.
23. It is important to note that the meetings between Ottavio Quattrochi and Sonia Gandhi continued even after the death of Rajiv Gandhi in 1991 even as Ms.Sonia Gandhi remained as a public servant under the Prevention of Corruption Act.
24. According to Sasi Dharan, Quattrocchi came to 10 Janpath 21 times after May 1991. Considering the long financial dealings of Mr.Quattrocchi since 1976 with LTTE (the assassins of Rajiv Gandhi), this fact is a subject of a future application for sanction as well.
25. Sasi concludes by saying: "Shri Quattrocchi left India on the night of July 29, 1993 and on this day also I had driven him to the airport. At that time he did not have any luggage except one briefcase and he told me he was going for an urgent meeting. Usually, whenever Mr. Quattrocchi wanted the car, he would tell me in advance, but the day he left, he did not tell me (in advance)". Obviously he had notice of his impending arrest by CBI in advance.

Companies. MOINEAO, MORESCO or PITCO. There was no sign board showing any of these names at this address. However, since it had been learnt during the initial enquiries, that Moincao SA was registered in Lausanne, enquiries were made in the Lausanne Registry.

From the particulars given above, it is seen that this is a Company whose business is "Trade in Immovable properties". The address at Lausanne is C/0 Bernard Nicod SA another local firm. The present Directors of the company are:-

- (1) Mr. Clande Blanchet, citizen of Clees, residing in Lausanne, Secretary.
- (2) Mr. Maurice Blyard, citizen of Riex residing at Lausanne, Administrator.
- (3) Mr. Willy Mock, citizen of Appenzell, residing at Paycrne, President of the Company.

The names of the three Directors, who are all residents of Switzerland are different from the names of the Directors as furnished by Bofors.

However, M/s Credit Suisse, 2, Place Bol Air 1204, Geneva were aware of the transactions relating to receipt of payment by M/s MOINEAO SA. This Bank did not disclose any information to the Investigating Agencies on the ground that it would be a criminal offence under the Swiss Laws governing the banking secrecy, particularly under Section 271 and 273.

Further, the manufacturers' Hanover Trust, 84 Rue du Rohne, Geneva (the second banker whose name was given by Bofors) did not have any transactions with MOINEAO SA or MORESCO or PITCO and no transactions were made through them by the aforesaid

Companies to make payments to any Indian residing in India or outside India through their Branch.

According to the Investigating Agencies, the functioning of this company seems to be mysterious as no trace of this company has been found at the address in Geneva given by Bofors. It seems that the Company registered in Switzerland is only a front organization being run for persons not residing in Switzerland.

(c) M/s A.E. Services Ltd.

The Investigating Agencies have found that a company called Target Practice Ltd. had been incorporated in London on 27th July, 1978 with a nominal capital consisting of 100 ordinary shares of pound 1 each. Only two shares of Pound 1 each were subscribed. The promoter of the Company was one Major R.A. Wilson, a retired army officer who was the Gorkha Regiment in India till 1947 and later in the British Army upto 1962. He specialized in defence contracts and is supposed to be one of the important lawyers in the field. On 9th August, 1979, the name of the company was changed to A.E. Services Ltd. The ultimate holding Company is CIAOU ANSTALT VADUZ, registered in Licchtenstein. Among the new directors were Mr. Mylcs Tccdale Stoot and Ms. Rita Zumbrunnen whose names were given by Bofors. They both had one share each of pound 1, while 98 shares all of pound 1 each were held by Division Beneficiaries Accreditors Ltd., 1501, Hutchison House, Hong Kong.

Major R.A. Wilson informed the Investigating Agencies that M/s A.E. Services Ltd., U.K. was connected with M/s A.B. Bofors for the Bofors contract with India. M/s A.E. Services Ltd. had entered into an agreement with M/s A.B. Bofors some time in 1985 to represent Bofors in India and some other countries. The A.E. Services Ltd.- Bofors Contract contain carefully drawn secrecy clauses.

The Investigating Agencies were informed that this agreement had to be cancelled following pressures placed upon Bofors by the Swedish Govt.'s decision that there should be no middlemen. Cancellation occurred effectively on 5th March, 1986. At that time, the only advice given by M/s A.E. Services Ltd. to Bofors related to the manner and timing of negotiations and the content of the Contract. The advice was given to Mr. Martin Ardbo personally. M/s A.E. Services Ltd. had done no work in India. Bofors assured M/s A.E. Services Ltd. that there should be a payment made embracing the work done and compensation for the loss arising to M/s A.E. Services Ltd. upon cancellation. The payment would have to be made within six months of 5th March, 1986. The payment was to be to the order of US \$ 7.3 million. Mr. Wilson confirmed that M/s A.E. Services Ltd., U.K. were paid US \$ 7.3 million on or around 11th September 1986. He further stated that this amount had been kept in M/s Nord Finanz Bank, 1, Bahnhofstrasse, CH 8022, Zurich. He stated that this amount has not been hitherto utilized, so that if any demand was received from the Inland Revenue Department on M/s A.E. Services Ltd. U.K. the same would act as a cover. No Indian or any Indian legal entity, whether resident or non-resident in India, stated to be connected with the holding company CIAOU which stands for Consortium for Information Assimilation and Output Unit. This organization has a number of "units" in different countries (but none in India), consisting of lawyers, accountants, consultants and other experts to obtain vital information which is assimilated and processed into equipment; in other words- in case a manufacturer of defence equipment/ supplier is on the lookout for a market for his product, CIAOU helps "to open the door" to such markets. No Indian individual, received any payments whatsoever from the compensation given by Bofors to M/s A.E. Services Ltd..

(d) ~~Anatronic General Corporation~~ of Shri V.N. Chadha

The enquiries made by the Investigating Agencies about the role of Shri W.N. Chadha revealed that prior to 1984 Shri Chadha used to receive his commission through the Govt. of

India, i.e. after the delivery was completed, the Company used to get 98% and 2% was given to him by the Government of India. However, in 1984, the position changed. He and other Indian representatives were barred from participating in any negotiations regarding defence deals including discussions on technicalities and price structure.

The Investigating Agencies were informed that Shri W.N. Chadha owned three Contracts, viz. AGC, Hertz Agencies Pvt. Ltd. and AGCPL- limited Companies representing various arms manufacturers. According to him he has received payments which were due to him or to his concerns except in one or two cases which were under dispute. He also mentioned that after the recent hue and cry, Bofors had not made monthly payments of 1 lakh SEK since July, 1987. He however, expected to receive these sums shortly."

6.17. Investigating Agencies pointing out the Secrecy Laws of Sweden and other handicaps, concluded as under:

"(i) It has not been possible to identify the real owners of the three companies whose names were furnished by M/s A.B. Bofors, viz.:

- (a) M/s Svenska Inc. Panama
- (b) M/s Moineao S.A. Lussane, Switzerland.
- (c) M/s A.E. Services Ltd. U.K.

The companies have been registered in tax havens obviously for the purpose of tax avoidance and secrecy. Svenska Inc. Panama is not reported to have done any business during the last two years and perhaps even earlier.

(ii) The nature of services provided by the foreign companies to M/s AB Bofors in securing the Indian contract, till the termination of the Agreements with them by payment of winding up costs are not known except to a limit extent in the case of M/s A.E. Services Ltd.

(iii) Even in the case of M/s A.E. Services Ltd. from the available details it seems that this company was brought into picture in November, 1985 and at the insistence of the Indian Government that no middlemen should be employed in the contract being executed by M/s AB Bofors, this agreement was terminated and a lump sum payment was made to M/s A.E. Services Ltd.

(iv) The information furnished by Shri W.N. Chadha of Anatronc Geneal Corporation, shows that no payments of a large scale were received by him prior to 1986 and the payments received in India upto 1985 were for services rendered during the trials of the guns and negotiations of the contract. The details of the amounts paid to him as given by M/s AB Bofors tally with the details of the amounts furnished by him in his income tax returns.

The information available at this stage does not show the involvement of any Indian, residing in India or outside India or any Indian associates in the large payments amounting to 319 million Swedish Kroners. M/s A.E. Services Ltd. one of the three companies has categorically stated that no payment has been made by them to any Indian residing in India or abroad or to any Indian associates and has even signed a declaration to that effect."

6.18. The assessee W.N. Chadha, went on refusing any knowledge or intimation about the above three Companies and stated that he had never met them and had never heard of them till the episode appeared in the newspapers. The JPC, however, on the basis of the information available to it, recorded its findings in respect of the assessee and M/s Anatronc General Corporation, as under:

"7.196 The Committee find that prior to January, 1986 Shri W.N. Chadha was the Bofors' sole representative for the Republic of India under a Representation Agreement. The Agreement was signed in 1978 for a period of three years, was

replaced by another Agreement in March 1981 and again in November, 1984. The contents of the Agreements appear to have remained the same except for the remuneration provided in form of commission on the value of sales. In the March, 1981 Agreement, the commission was shown as 2 per cent on payments received by Bofors, but in the November, 1984 Agreement this was reduced to 0.25 per cent. Agreements earlier to January, 1986 also provided for compensation as reimbursement for expenses an amount of SEK 100,000 per annum. The January 1986 Agreement under which Bofors appointed Shri W.N. Chadha as Administrative Consultant on a remuneration of SEK 100,000 per month counted from January 1, 1986, but without any commission on sales. It is evident that the status of Shri W.N. Chadha vis-à-vis Bofors for their business in India, prior to January, 1986, was that of a representative entrusted generally with the promotion of sales of Bofors' ordnance and performing the various support services for the Bofors' personnel. The Agreements prior to January, 1986 did not, however, confer on Shri W.N. Chadha the status of a duly authorized agent to enter into any contract with a customer or bind Bofors in any way without their written consent. Even with regard to negotiations, the condition was that direct business negotiations were to be handled by Bofors, with the participation of the representative, and that the representative had no authority to make contracts on behalf of or any another way to bind Bofors. These are important restrictions and they show that the role of Shri W.N. Chadha as representative was essentially a supportive one. Though the Agreement did provide for the participation of the representative, Shri Chadha has claimed that he never, in fact, took part in any negotiations or meeting in the Ministry of Defence. This is borne out by the documents furnished and evidenced tendered by the officers of the Ministry of Defence as also the Bofors' officials. The Committee find that in so far as the contract for the FH-77B Howitzer gun is concerned, Shri W.N. Chadha did not represent Bofors in any negotiations with the Ministry of Defence.

7.197. The Committee, however, does not accept Shri W.N. Chadha's contention that even prior to January 1986 he

was not interested in the promotion of sales of Bofors ordnance or that the words 'commission' and 'remuneration' have the same meaning. The provisions with regard to remunerations for Anatronic General Corporation was on commission basis to the extent that sales of Bofors' ordnance in India were effected, Shri Chadha as the representative would have been entitled to receive a commission on payments received by Bofors at the rate of 2 per cent under the March, 1981 Agreement till it remained in force, and one quarter of 1 per cent under the November 1984 Agreement till end of 1985.

7.198. The Committee find that Bofors paid a total amount of Rs. 59.20 lakhs to the A.G.C. (Anatronic General Corporation) and AGCPL (Annatronic General Corporation Private Limited) during the period 1979-87 (upto June, 1987). This includes an amount of Rs. 9.25 lakhs received by AGC as reimbursement of trial expenses for the gun during the years 1980-82.

7.199. On the basis of the foregoing, the testimony of Shri W.N. Chadha together with the testimony of the Bofors' representatives and the records furnished and evidence tendered by the officers of the Ministry of Defence, the Committee feel that Shri W.N. Chadha cannot be described as a middleman between Messrs A.B. Bofors and the Ministry of Defence Government of India.

6.19. The JPC was enquiring into the state of affairs at the relevant time in 1987 and 88, whereas the Income tax proceedings commenced much later. The JPC has given various findings to the effect that a lot of crucial information was not provided by the Bofors representatives. On the other hand, at the assessment stage, a lot of other material collected by the Investigative Agencies was available. Besides, it remains the settled position that income tax can be levied on actual or deemed receipt. Consequently the JPC findings do not apply as res judicata. The Hon'ble Supreme Court also has held so

6.20. As regards the investigations under the FERA into the affairs of Anatron General and Shri W.N. Chadha, the Committee understood that the Directorate of Enforcement was making further investigations and some cases were also sub judice. The Committee would, therefore, refrain from making any comments in this regard.

6.21. The JPC clearly refers to investigations upto 22-2-1988, whereas a lot of material has been collected by the investigative Agencies subsequently. The JPC in clear terms has held that various proceedings were sub judice and it was therefore that no comments were made in respect of FERA and the income tax proceedings were at a nascent stage.

6.22. Information about the assessee's Swiss Bank Account, the Rahmberg letter, the Svenska Board resolution, the Power of Attorney, information about the Svenskas lady Directors, advocates revelations about there being no business in Svenska were not available on record. The JPC on the material available only held that Mr. Chadha could not be held as a middle man.

6.23. We have made it clear that finding the middleman is not the only issue for assessment of tax liability in Income tax proceedings. The liability to tax rests on many considerations, including the various deeming provisions of the Income Tax Act.

6.24. The JPC refers to secrecy conditions and Bofors' undertaking to furnish further information, which does not appear to have been submitted by Bofors. The JPC had to submit a timely report to the Parliament in these circumstances, which cannot be ignored. The JPC has held that as per the prevailing circumstances and the available record, it cannot be concluded that Mr. Chadha was a middleman and that he received the kickbacks. It

rather, states that no comment was being offered for impending investigations. The JPC report nowhere says that Mr. Chadha or any other entities were held to be immune or exonerated from such charges. In our view the JPC has neither intended to oust the jurisdiction of the Investigative Agencies, nor has given findings constituting *res judicata* on the issues. Therefore, we do not find ourselves persuaded to hold that the JPC gave any clean chit to the assessee.

6.25. In view of these observations we are unable to hold that the JPC gave a clean chit to the assessee, or that its findings in any way exonerate the assessee's liabilities and accountability in other proceedings including income tax proceedings. The JPC's findings nowhere claim to be applied as *res judicata*. Hon'ble Supreme court also, while rejecting assessee's petition seeking discharge from the criminal case, held accordingly.

APPLICATION OF MATERIAL TO RELEVANT ISSUES OF THE CASE

6.26. Reverting to the original controversy, though Bofors accepts the above amounts were accordingly paid, but is trying to wriggle out of the situation by stating that the winding up charges were meant for services which are not performed by agents or middlemen. These payments as per Bofors, do not violate either Indian Defense policies or the covenants of the Agreement with Govt. of India in this behalf. Therefore. As per its stand, Bofors has neither misrepresented nor committed any criminal act.

6.27. The clinching mistake or omission on the part Bofors is that it should have been intimated to the Govt. of India to clarify that these were not regarded as agent or middleman services. This was of paramount importance, because the Govt. of India had a vested right to know about the

activities of intermediary agents or similar associates and to ask for reduction of the deal price, where agents or middlemen were involved. Bofors cannot be allowed to define the services of an agent. In a contract, both parties are equal. They are supposed to act faithfully and such defense contracts have to adopt a transparent and discernible meaning of the terms used therein. Bofors cannot unilaterally choose to hold as to who an agent is and what will be regarded as an agent's activity. May we mention here that apart from the contract papers, the Indian Prime Minister, in a personal meeting requested the Swedish Prime Minister, Olofe Palme, that agents should be eliminated from the deal and agent attributable cost should be reduced from the deal price. Bofors acknowledges this personal meeting of the Heads of the respective countries.

6.28. The Assessee's long-standing connections as a representative of Bofors and its looking after the sales promotion and their interests in India are not denied. It is contended that since Bofors' business prospects were going down, the assessee's commission was reduced from 2% to .25%. The facts clearly state that rather the prospects were brightening and reaching pay dirt. The facts give a converse picture i.e. business was picking up. After a trial test of the guns, four bidders, including Bofors were short listed by the Govt. of India. besides in Question no. 94 of statement given to AO about sale of other supplies, clearly indicates the continuity of Bofors business. The Govt. was seized with a huge multibillion gun deal, here Bofors ranked as a potential bidder, so actually the business prospects of Bofors were shining and bright and not plummeting, as tried to be contended. In question no. 91, while replying to a query about reimbursement of expenses the assessee replied that "to smaller places like Deolali, Pokhran etc. he was being sent". All these facts clearly indicate that

26. As a consequence of the misuse of her office and position, Ms. Sonia Gandhi helped Ottavio Quattrocchi not only escape from the country, and in 2005 even to withdraw \$ 29 million from his de-frozen accounts and thus let off scot free.

27. Hence, it is *prima facie obvious* that Ms.Sonia Gandhi had misused her office [she was Life President in the Government funded Indira Gandhi National Centre for Arts Trust(IGNCA Trust) during 1991-2002] and thus a public servant with considerable influence in government to enable Mr. Quattrocchi to escape from India in 1993 and later in 2005 to benefit Mr.Quattrocchi to illegally gain monetarily at the expense of the Consolidated Fund of India, by defreezing his London accounts.

SECOND ISSUE:.

28. This complaint against Sonia Gandhi also includes the corrupt monies held under her control in the tax haven of Switzerland as a legatee of the corrupt money which was banked in the name of her late husband or deposited by her of funds obtained from the erstwhile KGB, the Soviet Union's Intelligence Agency, or by sale of illegally exported antiques in the country. I retain the right to submit details of other illegal accounts in other havens such as Macao at a later stage in another application to you or before the court.

29. It is well-reported that Sonia Gandhi is the beneficiary of Rajiv Gandhi's estate which includes the corrupt monies continued even now to be held in a tax havens. Why this money is held abroad (even if held as a trust to benefit family members) instead of its being held in India within the Indian financial system to benefit the nation is a question which Ms.Sonia Gandhi must answer.

the prospects of the Bofors business were brightening and lots of activities were going on, the replies of both the assessee and Bofors are contrary to the apparent situation and against normal human conduct. These are glaring inconsistencies in the explanations, due to which, the process and clock of adverse inferences gets triggered in the circumstances.

6.29. The AO in AY 1987-88, disallowed foreign travel expenses claimed as business expense by the assessee by making following observations:

“12 FOREIGN traveling:”

The expenditure under this head includes foreign visits undertaken by the assessee to Bangkok, Manila and Hongkong for which the assessee could not adduce any evidence to prove the business expediency. Hence sum of Rs. 41,504/- incurred on foreign traveling to the aforesaid places is disallowed.”

The assessee, before CIT(A), made further submissions contending that these expenses were incurred to attend a Regional Conference of Defence Suppliers, on behalf of Bofors, at Maina, Hongkong. CIT(A) allowed the assessee's claim of foreign travel expenses by observing as under:

“98. Before me, the counsel has pleaded that the Assessing Officer has disallowed a sum of Rs. 41,504/- incurred by the appellant, on foreign traveling to Bangkok, Manila and Hong Kong. The appellant, who was representing Bofors was asked by them to attend their regional conference and exhibition which took place at Bangkok, Manila and Hong Kong. The appellant had to attend the said conference in order to meet the foreign principals and be updated on the latest developments in its field on business as well as to discuss other business matters with the foreign principals. It is submitted that the appellant before proceeding on foreign tour took the requisite permission from the Reserve Bank of India. In view of the above, the said expenditure could not be disallowed, on the ground of want of proof of business expediency. Tour expenses for attending international conference connected with the

business of the assessee is a deductible expenditure as held in the case of CIT Vs. S. Krishna Rao (1997) 76 ITR 664 (A.P).

99. I find that it has been conceded that the appellant was representing Bofors and was asked by them to attend their regional conference and exhibition which took place at Bangkok, Manila and Hong Kong. It has been admitted that the appellant had to attend the said conference in order to meet the foreign principals and be updated on the latest developments in its field of business.

100. In view of the arguments tendered on behalf of the appellant, the Assessing Officer is directed to allow Rs. 41,504/- incurred by the appellant on foreign traveling as expenses connected with the business of the assessee."

Assessee's own admission and CIT(A)'s observations clearly show that assessee was very representative of Bofors, accordingly they deputed him to attend a principal to principal Defence Suppliers Conference on behalf of Bofors. Therefore, assessee and Bofors cannot be believed in saying that Mr. Chadha was not a representative but only a booking agent. He had much more important functions to perform and it also indicates that part of the remuneration was diverted to by pass Indian Defense policy and given through Svenska.

6.30. The inferences which emerge are:

- i) The statements of Bofors and the assessee that Bofors' business was in a slow down, are not correct.
- ii) The assessee's role was as Bofors' representative and not limited to the arranging of hotel bookings and receiving fax etc. as claimed, therefore these assertions are also incorrect.
- iii) The relations of Bofors and the assessee were not only limited to India but other countries also.

iv) Mr. Chadha was a very important functionary of Bofors, who deputed him to attend the Regional Conference to meet other suppliers on a principal to principal basis.

v) The assessee continued to be the Bofors' agent and was entitled to appropriate remuneration. To by pass law and policies same was camouflaged by splitting, paying minor part in India and major part by Svenka in Swizerland.

6.32. From the above, it is clear that both Bofors as well as the assessee have made incorrect statements in this behalf. It is natural that in such situations, parties do give self-serving statements. It is for the fact-finding authorities to ascertain the truth by lifting the corporate veil.

6.33. It may be recalled that despite the full knowledge about the Indian Defense Policy of 1985 to eliminate agents, Bofors' intimation about the liaisioning remuneration of one lakh sweedish kroners to Anatronic Corpn. for hotel bookings, fax etc., was a cover up, as Anatronic was neither a Company nor an incorporated entity but a proprietorship concern of Mr. Chadha, who in his individual capacity performed very important activities, like visiting defense establishments and high level conferences. This is not any inference drawn but the assessee's own admission on oath. The facts of Bofors' delay in communication of having dispensed with their agent, Mr Chadha's delayed signing of such consequential Agreement and his continuing with functions befitting the status of a full fledged agent or representative, all militate against the self-serving statements of the assessee and Bofors.

SNAB REPORT RELEVANCE:

6.34. The SNAB report has further quoted that "President of M/s AB Bofors Per Ove Morberg, stated that the principal beneficiary in M/s

Svenska Inc. is an Indian, who has been an agent for Bofors for ten to fifteen years". There is nothing available to suggest that the President of Bofors, while making this disclosure to the Audit Organization of his own country, would tell a lie. We are unable to comprehend a situation where Mr. Morberg whose work was to protect the interest of Bofors in India, would make a statement incriminating an Indian, if such an Indian was not involved. In the entire record, except the name of Mr Chadha, the name of no other Indian occurs and the SNAB report refers only to the old Indian agent of Bofors.

6.35. The only logical and inescapable conclusion, which can be drawn from all these facts, coincidences, record and the various parameters laid down by the Hon'ble courts in this behalf, as discussed hereinbefore, is that Mr. Win Chadha was the principal beneficiary of the payments made by Bofors into the account of M/s Svenska Inc.

6.36. It is clear from the record that SNAB verified the original papers and knew the names. However, due to some pressing strategic considerations, these names were not disclosed in its Report to the Govt. of India. This import of disclosure can neither be ignored, nor underestimated. It is the duty of the Revenue Authorities to be mindful of clues and coincidences and bring them to logical conclusions, otherwise clandestine tax evasion through shady economic deals, will go undetected, as appears to be the order of the day. India is neither a tax haven, nor a banana republic. Rather, it has an established dispensation of the rule of law, making tax dodgers answerable and accountable. In such type of transactions, it is hard for the AO to unearth direct evidence or demonstrative proof. Therefore, circumstantial evidence and appropriate appreciation thereof acquires great importance. The Hon'ble

higher courts have rather emphasized that in tax proceedings the exercise of deducing facts can be undertaken on circumstances and facts.

6.37. The Swedish Govt, consequent to the Govt. of India's official request has come on record that commission was paid to the Indian agent of Bofors. The interesting question for consideration at this juncture is as to whether an official statement of a sovereign State can be relied on in tax proceedings. It will be pertinent to consider that the Swedish Govt. has very good relations with the Indian Govt., as its defense industries are major suppliers of armaments to India. The Swedish Govt. would not like to compromise its Indian relationship by incorrect revelations about one supplier. If the statement of a sovereign govt. sent through diplomatic channels and that too on the request of Indian Govt., is not acceptable or reliable evidence in Indian tax proceedings, no case of cross-border tax evasion can ever be detected or proved. No burden can be cast on the AO in impossible terms. We see no reason to hold that the Swedish Govt. and its own Audit Department SNAB gave any wrong report by mentioning Indian agent as recipient. Besides, all the circumstantial evidence, as deliberated, leads to this conclusion. Mere non-mentioning of names of recipients cannot be capitalized by Bofors or assessee to derail the tax liability.

SVEN RAMBERG'S LETTER

6.38. Sven Ramberg's letter, which is not denied by the assessee, clearly indicates that Mr. Chadha received a well earned and congratulatory fee in this deal. The assessee claims that this letter was written by a Swedish friend Ramberge as the Bofors gun deal was a big news in Sweden. He thanks the assessee, as a friend, for sending a shining present, admires his capabilities

in the field of gun deals and congratulates him for earning a well deserved fee.

6.39. The surrounding circumstances on the other hand, have an entirely different story to tell. In the first place, there was no agent in the Gun deal. No Swedish newspaper would quote Mr. Chadha as being the agent and as having earned a good fee in the deal. If Sven were a friend worth sending a shining silver present all the way from India, Mr. Chadha would have also intimated him at the relevant time that he was no longer the agent of, but merely an errand boy for Bofors. Had that been the case, a letter from such a friend would express consolation (rather than congratulations) for Mr. Chadha having lost the substantial fee, which could otherwise have been well earned by the assessee.

6.40. The assessee was far too experienced not to understand that absolute secrecy is the key to defense deals and that the Bofors Agreements had a standard clause of secrecy. He would under any circumstance, not disclose the details of a defense contract and the commission involved therein to his friend, unless there was more than met to eye. The letter is not innocuous, as sought to be proffered by the assessee. To the contrary, it leads to a clear fact that Mr. Rahmberg along with Mr. Linder was an associate having concern with the deal and was waiting for a letter from the assessee. The assessee's reply doesn't appeal either to logic or to business realities, much less to human conduct desirable from an old hand like the assessee in the sensitivities of a defense deal. This letter which is accepted by the assessee, has important value as circumstantial evidence. Since incorrect replies are given by the assessee in his statement on oath, the AO is not obliged to give further evidence to prove him wrong, a suitable inference is to be drawn by the Revenue Authorities

6.41. All these facts and material available on record do not fit into the set up of human probabilities and surrounding circumstances to render assertions and statements made by the Bofors and assesses, as believable.

6.42. In our view, the Swedish Govt.'s Official communication, Sven Ramberg's normal and probable human conduct, the preponderance of probabilities, all read together harmoniously, clearly indicate the facts to be otherwise than those suggested.

6.43. We are conscious of the fact that the I.T. Deptt. was carrying out investigations in difficult circumstances ascribable to the sensitive nature of enquiries, their ramification on national politics and public perception. It was very difficult to get information and documents and to examine concerned links due to the premeditated surreptitious cover up of transactions and smokescreen corporate jugglery. There is no presumption in law that the AO is supposed to discharge an impossible burden to assess the tax liability by direct evidence only and to establish the evasion beyond doubt as in criminal proceedings. This is why Hon'ble courts by way of a catena of binding judicial pronouncements, have held that tax liabilities can be assessed by Revenue Authorities on consideration of material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/ evidence available on record.

6.44. In such clandestine operations and transactions, it is impossible to have direct evidence or demonstrative proof of every move. The income tax liability is to be assessed on the basis of the above parameters and when the witness i.e. the assessee is not forthcoming with proper facts and chooses to be elusive and evasive, the AO has no choice but to take recourse to estimate. The only caveat is that it should be reasonable and based on

material available on record. It should not be perverse or based merely on conjectures. In our view, herein the AO has considered the relevant aspects in quite a reasonable and tenable manner. In our considered view all the above material available on record and the facts and circumstances make it clear that this income is taxable in the hands of the assessee.

CHARGE SHEET FILED BY CBI

6.45. The assessee claims that the material contained in the charge-sheet filed by the CBI, is inadmissible in income tax proceedings. We have already held that the same is admissible as material available on record. AO has not built up his case only on this charge-sheet, and has made efforts to bring on record other evidence and circumstances against the assessee. The Hon'ble Supreme court has also held that the assessee is prima facie liable to be charged under the IPC and JPC has also not given any immunity to the assessee. In view thereof, it cannot be held that AO's case rests only on a charge-sheet.

"THE HINDU" NEWS PAPER MATERIAL

6.46. The assessee contends that the Agency of "The Hindu" newspaper neither authenticated the source of their information nor the originals thereof were ever produced and that the assessee was never given opportunity to cross examine them, and that consequently, it is not proved that Svenska is the assessee's front company or there is any power of attorney and existence of Swiss Bank Account No. 99921-TU. In the absence of such material, as per the assessee, the additions cannot be sustained.

6.47. We have already observed that the assessee continued to provide valuable services to Bofors in this defense deal as a responsible representative, or agent, or whatever term may be used to describe such a relationship. The Bofors' President, at first blush, accepted that payments

were made to its earlier agent in India. SNAB, on the basis of the statement and verification of the record gave a Report to the Swedish Govt., that payments were made in this deal. No name was mentioned. The Swedish Govt. acceding to the Indian Govt.'s request, sent this Report through the Indian Ambassador to Sweden. The CBI enquired into the matter. Letters Rogatory were issued by competent Indian court. On the basis of these inquests, it was revealed that the assessee did have a Swiss Bank Account. Existence of Svenska was accepted by Bofors and its main beneficiary was attributed to be the old Indian agent. Information received gave details of Bofors' invoices which were not denied. Amounts, dates and installments tallied. In our view the information of this magnitude and relevance demonstrates beyond question that the assessee was the recipient of this commission. "The Hindu" newspaper is a further corroboration of the facts which show that the assessee is the recipient.

6.48. Besides, from the grounds of appeal filed before us and those before the CIT(A), it comes out that no specific ground for insistence on the personal attendance of "The Hindu" newspaper officials was specifically requested by the assessee. There is no letter in the assessee's paper book evincing that any specific request was made by the assessee for "The Hindu" news agency's personal attendance and cross examination. The plea in this behalf, without taking any specific ground in the first and second appeals and without there being any request available on the paper book, cannot be accepted at this belated stage. As already mentioned, the AO is obliged to confront the assessee only the material gathered by him, which is disputed. The assessee instead of giving proper explanation, went on taking a stand of bland denial and taking technical objections about originals on every

information. This specious plea is a mere afterthought aimed at trying to thwart the assessment of correct income and is liable to be rejected as such.

6.49. In our considered view even if this Hindu Newspaper material is ignored, it would not change the fact that Svenska and its funds were payments made by Bofors for the assessee. The income is deemed to be received by the assessee.

LETTER ROGATORY AND IMMUNITY

6.50. The assessee's pleads that some material was obtained by Letter Rogatory with immunity provided by Swedish law from being used against third parties in tax frauds in the nature of duties, custom, money laundering etc. The immunity if any was applicable to money laundering, custom duties etc and that too for tax frauds only. There is no mention of income tax proceedings therein. The impugned orders are for assessing regular income tax proceedings and not for tax frauds. Consequently this plea of the assessee bears no merit and deserves to be rejected.

6.51. Mr. Chadha, along with Ottavio Quatrocci and the Hindjuas, opposed the Letter Rogatory proceedings before the Swiss Courts. Now if the assessee had no link with Svenska and his Swiss Bank Accounts, there was no need for him to have challenged these proceedings costing a fortune in Switzerland. If the assessee was as clean as claimed, he would have rather welcomed the supply of information by the Swiss authorities to the Govt. of his own country and would have avoided the trouble and cost of such litigation. Challenging the action of proper disclosure by the Swiss Govt. to the Indian Judicial System leads to an important adverse inference against the assessee.

30. Violations of FEMA have occurred as also under Prevention of Money Laundering Act. In case any transaction on this account which is not reported in the Income Tax Returns, and FCRA is also a violation. There may also be an issue of obtaining RBI prior permission for holding such large sums abroad if it is claimed to be a legitimate account.
31. It is clear that this wealth was not reported in Election Affidavits of Sonia Gandhi & Rahul Gandhi as a beneficiary of the monies so held [Annexure 6]. The total wealth of both Gandhis, as per their election returns, is just Rs 363 lakh, Sonia owns no car. "
32. When Schweizer Illustrierte a prestigious German language Swiss magazine alleged that Rajiv Gandhi held an illegal account in Swiss banks of about US \$ 2 billion, neither she nor her son, protested, or sued the magazine, then or later [Annexure 7].
33. When major papers, The Hindu and The Times of India included, had carried in the year 1992 the official confirmation of KGB payments to the Rajiv Gandhi family, adding that the Russian government owned the payments in the disclosures, neither of the two Gandhis challenged or sued them [Annexure 8].
34. Nor did they sue Dr. Yevgenia Albats, a member of the official Commission on KGB Operations set up by President Yeltsin, when she wrote about KGB payments to Rajiv Gandhi and family in her book: The State within State [Annexure 9]
35. More than \$ 2 billion in 1991 was being held by Ms. Sonia Gandhi as a legatee, or otherwise obtained by receiving stolen movable and immovable properties, monies and securities, kept illegally in tax haven banks of Switzerland and elsewhere, and which is disproportionate to

SVENSKA FACTS AND CONCORDANCE OF DATES

6.52. We have already held that the material available on record is admissible in income tax proceedings. Adverting to the alleged inconsistencies in the concordance table of dates, the fact is that many events tally and complement each other, which indicate that there was a palpable similarity in the events. The exception proves the rule. Some of the mismatches are bound to happen in such a mammoth investigation.

6.53. On the one hand Bofors desired to eliminate the middleman on paper and removed the assessee's name and brought in Anatronics, whose commission was reduced; whereas on other hand the corresponding reduction was paid to Svenska in its Swiss Bank Account which was to be operated by the assessee. Bofors claims that this is no coincidence that these are winding up/termination charges. The question is, if they were so conscientious why not informed the Govt. of India. In our view, the assessee and Bofors have failed to instill confidence in their statements, explanations and responses to successive disclosures during investigations. In our view, the concordance chart is reliable in most of the events and it clearly proves that Svenska is the assessee's front company. The actual income due to the assessee out of this Defense Contract from Bofors was camouflaged and split up in the name of Anatronic errand remuneration and Svenska's commission as winding up charges.

6.54. It cannot be ignored that at the relevant time, the impugned Defense Deal was at a very advanced stage. Bofors had completed detailed calculations about costing, comparative bidding, testing i.e. a series of

antecedents to finalize such deal had already been undertaken. The assessee was actively engaged in the finalization of the Deal in his role as agent or representative. It is unthinkable that Bofors would terminate the assessee's service at this crucial juncture and not compensate him for the agreed commission.

6.55. While giving his statement, the assessee deposed that he had no knowledge whatsoever about Svenska and this name was unknown to him till it became media news. The assessee's statement is not correct. Svenska was the assessee's front. By the Svenska Board Resolution dtd. 30-4-80, he was authorized to open, operate and deal with Bank Account for it in the manner he liked. Bank Account No. 99921-TU, where the money was transferred, belonged to the assessee.

6.56. Besides, the assessee was Bofors' agent since 1978, looking after their business interests and meeting other leading operators in the world defense industry in conferences, suggests that he had earned the faith of Bofors. It is difficult to believe that Mr. Chadha was unaware of the work of related entities like AE Services and Svenska, who were assigned hugely remunerative jobs called as winding up, or termination of contract, or by any other term which may be used in the defense deals jargon.

6.57 We are dealing with a case where investigations were blocked in one way or another. Whenever they reached a degree of objectivity Bofors and assessee tried to deflect or deflate ascertainties of facts. But this does not mean that law will not have its course. Therefore various judicial authorities have held that for income tax proceedings material available on record should not necessarily be one which will be admissible in criminal or civil

court proceedings. In the statement on oath before the JPC also, the assessee did not come out with the truth. The Assessee's role since the past has been of Bofors' Indian agent in Defense Deals and it is hard to believe that the assessee was relegated to the position of a mere booking agent for hotels and errands and that an obscure Panama based company was paid the difference of commission. In view of the discrepancies and inconsistencies in the facts as projected, the misstatements given by the assessee from time to time, they cannot be relied on as being unworthy of credence. Under these circumstances, assessee's case has to be decided on the preponderance of probabilities, normal probable human conduct and the material on the record.

6.58. We have already mentioned AO is not concerned as to whether the assessee is held as a middleman or commission agent, or whether the actions are legitimate or against the Indian Defense Policy. His endeavor is to bring to Govt. the taxes which are due, an exercise far different than criminal or civil court proceedings.

6.59. All through, the assessee has demanded 'where are originals?' There has never been any challenge to the contents thereof as false or incorrect. It has to be borne in mind that the evidence has been collected by the JPC and by premier Investigating Agencies of the Indian Govt. Their contents broadly match with each other and the facts mentioned therein are corroborated by cross or direct references. The facts have a clear inter se corroboration, which cannot be called a mere coincidence. An inference cannot now be raised against this material that the contents thereof are fabricated or incorrect. The evidence was obtained by lawful means - by diplomatic or other official and govt. channels. Questioning their contents or

veracity in income tax proceedings will amount to disbelieving the whole system. The assessee has nowhere claimed these documents to be false or fabricated the insistence is only on production of originals, or their admissibility. The Hon'ble Courts have laid down parameters for the Revenue Authorities in tax proceedings to respond to such circumstances also. Therefore, the assessee's plea in this behalf cannot be accepted.

6.60. We now proceed to dwell upon the issue of burden of proof. If the AO, during the course of proceedings comes across some material indicating any accrual or receipt of income in the hands of the assessee, he is empowered to investigate the matter and ask relevant questions. The AO's burden is initial in nature, the assessee, thereafter, has to give a proper explanation, which means, it must be true and disclosing proper facts, more particularly when they are in the exclusive knowledge of the assessee. The assessee has no option to remain selective, elusive, evasive or restrained in disclosure. After such explanation, statement or other disclosure of the assessee, the AO will ascertain the correctness of the assessee's submissions on the basis of material available on record, the surrounding circumstances, the conduct of the assessee, the preponderance of probabilities and the nature of incriminating information/ evidence available with him. In the light of all these, the AO in this case discharged onus cast on him and came to the conclusion that the assessee was liable to tax qua Svenska commission.

6.61. The fact about the assessee's dominant position at the time of ripening of the prestigious defense deal, maintaining/operating key bank accounts, and his capacity to transfer funds, the trail whereof has been demonstrated by the AO, all lead to the inescapable inference that the above income accrued or is deemed to have accrued to the assessee.

6.62. There is enough material on record to hold that the payments were indeed made by Bofors to Svenska AE Services and Moresco through the above Foreign Bank Accounts, in connection with the defense Deal with the Govt. of India. Merely by giving convenient alibis, like winding up or termination cost to these payments Bofors cannot escape from conclusion that these payments were made in relation to this Defense Deal, call it payment to winders up, terminators, or middleman, or agent. Therefore, the assessee is liable to pay income tax as determined by the AO in this behalf.

WHETHER OTHER ENTITIES ARE AMENABLE TO INCOME TAX JURISDICTION IN BOFORS PAYOUTS

6.53. The subject matter from which these payments flew and a substantial part of the services rendered by assessee. A.E. Services, Ano, Moresco etc. pertain to this Indian Defense Contract, executed in India. All these entities are amenable to jurisdiction of Indian Income Tax Department, to bring to tax the amount which accrues or arises to them for these services, or is received, or it is deemed to be so by them. Indian income tax is leviable on all types of income, including legal and illegal income, whether recipients are Indian or foreign resident. In these facts, all the connected entities are clearly amenable to Indian tax jurisdiction for their respective income.

6.64. The Hon'ble Bombay High Court recently has dealt about jurisdiction in the case of Vodafone International Holdings BV (2010) 193 Taxman 100, as under:

“By the provisions of sub-section (2) of section 5, the income of a non-resident from whatever source derived is includible in the total income, if it is received or deemed to be received in India or if it accrues or arises or is deemed to accrue or arise to him in India during the year. Breaking down sub-section (2)

into its components, it covers income of a non-resident which (i) is received in India; (ii) accrues in India; (iii) arises in India; (iv) is deemed to be received in India; (v) is deemed to accrue in India; or (vi) is deemed to arise in India. [Para 80]

Income is said to accrue or arise when the assessee has a right to receive the income. The words 'accrue' and 'arise' are used in distinction to the word 'receive'. The words 'accrue and arise' indicate a right to receive. Section 9(1) defines the circumstances in which income is deemed to accrue or arise in India. Sub-section (1) of section 9 defines in clause (i), income which shall be deemed to accrue or arise in India. Clause (i) is, in turn, distributed into four categories. These categories cover income accruing or arising, whether directly or indirectly: (i) through or from any business connection in India; (ii) through or from any property in India; (iii) through or from any asset or source of income in India; or (iv) through the transfer of a capital asset situated in India. In each of these four categories, the law has postulated the existence of a nexus with India which invokes taxing jurisdiction. The nexus is provided in the case of the first category from a business connection in India; in the second, by the situs of the property in India; in the third, from any asset or source of income in India; and in the fourth, by the situs of the capital asset which is transferred, in India. The Parliament has been careful to ensure that even while adopting a deeming fiction in defining incomes which are deemed to accrue or arise in India, there must exist a nexus with India upon which the jurisdiction to tax is founded. [Para 81]

6.65. In Vodafone case, a foreign entity acquired shares for controlling the interest of an Indian company, from another foreign entity, by way of a contract executed in a foreign territory. Consideration of transfer was also paid and received in the foreign country. Jurisdiction was invoked by the Indian Income Tax Department against the purchaser on the issue that it had made the payments to a foreign national, without deducting and withholding tax called as TDS in India. The purchaser Vodafone challenged the jurisdiction contending that neither the contract nor the consideration, nor

the seller, nor even the purchaser were located in Indian Tax jurisdiction and this being so, India had no jurisdiction on such transaction. Hon'ble Bombay High Court upheld the jurisdiction invoked by the Indian Tax Authorities.

6.66. In the Bofors supply case the fundamental contract was executed in India between Bofors and Defense Department. Payments were made from India and the services were to be rendered in India. All the incidental payments would have an Indian connection. Therefore, the Indian tax jurisdiction is squarely invoked.

6.67. Before us, neither of the parties has adverted to any other investigations. We are surprised to observe that though the Department has proceeded against the assessee, no action seems to have been taken against either Services or Ottavio Quattrocci and other related entities, by the Income Tax Department. Bofors admittedly paid the amounts to the assessee, AE Services, Quattrocci and other entities. It's liability for withholding tax is built in. Mr Ottavio Quattrocci was living in India for a considerable time. The issue about his tax residence status should have been verified.

6.68. In our view the Department should have carefully examined the issues about their taxability and their having PE in India and appropriate proceedings should have been undertaken to assess and recover taxes. We may point out there exists a serious issue apropos Bofors for not having deducted withholding tax i.e. TDS, from such payments to the assessee/ Svenska, AE Services, Quattrocci. In our view, to enforce the rule of law, these steps were desirable to bring all the relevant income tax violations to a logical end by the Income Tax Department. Inaction in this regard may lead

to a non-existent undesirable and detrimental notion that India is a soft state and one can meddle with its tax laws with impunity.

WHETHER COURTS HAVE VALIDATED PROCEEDINGS USING THEIR EXTRAORDINARY POWER VESTED BY INDIAN CONSTITUTION

6.69. The Hon'ble Supreme Court in the case of Green World Corporation 181 Taxman (SC) 111, has dealt with a some what similar issue. In that case proceedings u/s 148 of the Act for reopening of completed assessment were found to be not valid by the Hon'ble Supreme Court. By the time the matters reached before Hon'ble Supreme court, they had become time barred. However, looking at the irregularities, the Hon'ble Court exercising its extraordinary powers under Article 142 of the Constitution of India, directed the Department that assessment be reopened. The Hon'ble Court held as under:

“35. This case poses before us some peculiar questions. Whereas the order under section 263 of the Act and consequently the notices under section 148 of the Act have been held to be not maintainable, we are constrained to think that the Assessing Officer had passed an order at the instance of the higher authority which is illegal. For the aforementioned purpose, we may not go into the question of *bona fide* or otherwise of the authorities under the Income-tax Act. They might have proceeded *bona fide* but the order of assessment passed by the Assessing Officer on the dictates of the higher authorities being wholly without jurisdiction, it was a nullity. We, therefore, are of the opinion that with a view to do complete justice between the parties, the assessment proceedings should be gone through again by the appropriate assessing authority.

36. It is true that despite order passed by the High Court, CIT (Delhi) has not been impleaded. Presumably, because of the said defect in the order passed by the High Court of Himachal Pradesh at Shimla,

revenue could not implead CIT (Delhi) as a party in the appeal. CIT (Delhi), however, has been impleaded as a party in the Special Leave Petition (SLP) filed by the Assessee. CIT (Delhi) has although in an irregular manner filed a rejoinder. Counter affidavit was filed by the assessee in the appeal preferred by the revenue and the same is on record. The said authority, therefore, is otherwise before us.

37. It is now well-settled that this Court in exercise of its extraordinary jurisdiction under Article 136 of the Constitution of India may, in the event an appropriate case is made out, either refuse to exercise its discretionary jurisdiction or quash both the orders if it is found that setting aside of one illegal order would give rise to another illegality.

In *Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P.) Ltd.* [2006] 1 SCC 540, this Court held :—

“(53) It is now well-settled that this Court would not interfere with an order of the High Court only because it will be lawful to do so. Article 136 of the Constitution vests this Court with a discretionary jurisdiction. In a given case, it may or may not exercise its power. . . .” (p. 555)

We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the assessment be reopened by the Commissioner of Income-tax, Delhi-VII.

38. These appeals are disposed of with the aforementioned directions. No costs.”

6.70. In view of the above observations, the Department may examine these issues and, if so advised, may take necessary appropriate action.

CONCLUSION

BOFORS COMMISSION

6.71. Keeping in consideration the rival contentions, all the facts, the material available on record, the probable normal human conduct, the surrounding circumstances, the preponderance of probabilities and the legal propositions, we have not hesitation to hold that assessee received the

impugned commission as added by AO as his income for AYs 1987-88 and 1988-89. This ground of the assessee is dismissed.

INTEREST ON SUCH COMMISSION

6.72. No material has been brought on record to suggest that the assessee made any investment of any kind. Our earlier findings are based on a lot of material about issues related to commission. There is no similar material to indicate that the assessee either made any investment or earned any interest income. The AO while estimating 5% deemed interest on the entire income, has not either referred to or relied on any material whatsoever. In these circumstances we are unable to uphold such additions on account of notional interest income. This ground in all the years is allowed.

BUSINESS EXPENSES IN A Y 1987-88

6.73. We have already held that the assessee was carrying on a wide-spread business. Earlier, the ITAT has deleted or suitably reduced the additions made by lower authorities. Since we have held the scope of assessee's apparent business as enlarged one, the interest of justice will be served, if assessee's claims in respect of business expenditure and allowances, as claimed, are allowed. These grounds of the assessee are accordingly allowed.

HOUSE PROPERTY INCOME

6.74. The ITAT, in assessee's own case in past many years, has been accepting assessee's income by recording the above mentioned findings. Respectfully following the same we delete the additions in all the years.

INTEREST U/S 234

6.75. Levy of interest u/s 234 is held to be consequential in nature.

her known sources of income. She thus has also committed offence u/s 13(1)(e) of PCA. It also attracts the IPC Sections for receiving stolen property.

36. The recent deposition of Hasan Ali, alleged to have siphoned money of the nation to Switzerland secret accounts admits to his close association not only with her but with Mr.Ahmed Patel MP and political adviser to Ms.Sonia Gandhi [**Annexure 10**].

37. Ms. Sonia Gandhi is also obviously culpable under Indian criminal law such as FCRA for the pay offs in the Iraqi Oil-for-Food scam of 2002. The United Nations had set up an independent inquiry committee under Dr. F. Volcker which found that the "Congress Party" headed by Ms. Sonia Gandhi as a beneficiary of a free oil quota from the now deposed and deceased dictator Saddam Hussein, which the beneficiary sold at market price through Marc Rich, the notorious swindler who had been convicted by a US Court for 350 years and several million dollars as fine. He was pardoned by US President Clinton in 2000 on Israeli Prime Minister's intervention. He lives in Switzerland.

38. No one in Congress Party but Ms. Sonia Gandhi as party President could have been this beneficiary. The other beneficiary listed in Volcker's Report was by name: Natwar Singh, who got much less [**Annexure 11**].

39. I reserve the right to further petition you to enlarge the scope of this sanction at a future date to include other violations and offences committed by Ms.Sonia Gandhi under Prevention of Corruption Act (1988), for which I will file with you a separate application if necessary..

40. But, in this application alone there is substantive prima facie evidence for an appropriate court to take cognizance of the offence committed by Ms.Sonia Gandhi under the Prevention of Corruption Act, and thus I seek your sanction to initiate the criminal law to prosecute her under the Act.

7. In the result, assesses appeals for AY 1987-88 and 1988-89 are partly allowed and all other appeals are allowed on above terms.

Order pronounced in open court on 31-12-2010.

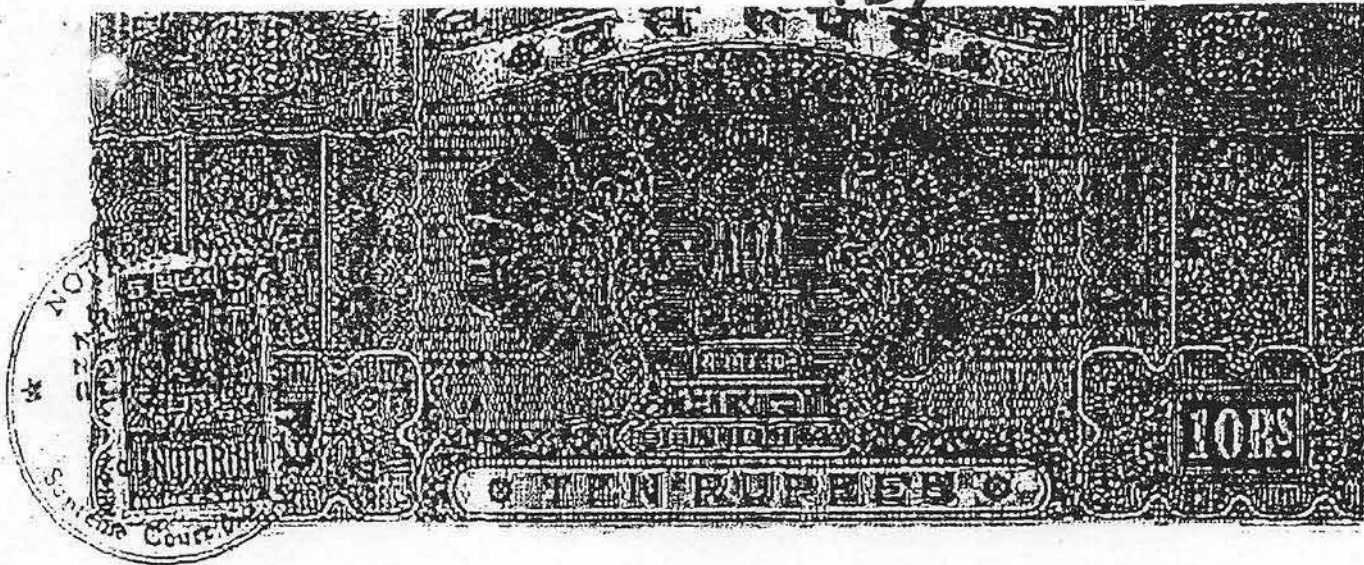
Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER
Dated: 31-12-2010.

Sd/-
(R.P. TOLANI)
JUDICIAL MEMBER

MP

Copy to :

- (1) Assessee
- (2) AO
- ◆ (3) CIT
- (4) CIT(A)
- (5) DR



FORM 26
(SEE RULE 4A)

Affidavit to be furnished by the candidate before the returning officer for election to the House of People [LOK SABHA] (name of the House) from Rao Bareilly Constituency (name of the constituency)

I, Sonia Gandhi, wife of Late Shri Rajiv Gandhi aged approx. 56 years as on 1.1.2003, resident of 10, Janpath, New Delhi candidate at the above election, do hereby solemnly affirm/state on oath as under:-

1. I am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.
2. I have not been convicted of an offence(s) [other than any offences] referred to in sub-section(1) or sub-section(2) or covered in sub-section(3), of section 8 of the Representation of the People Act, 1951 [43 of 1951] and sentenced to imprisonment for one year or more.

Place: New Delhi

Date: 03.04.2004

Sonia Gandhi

Deponent

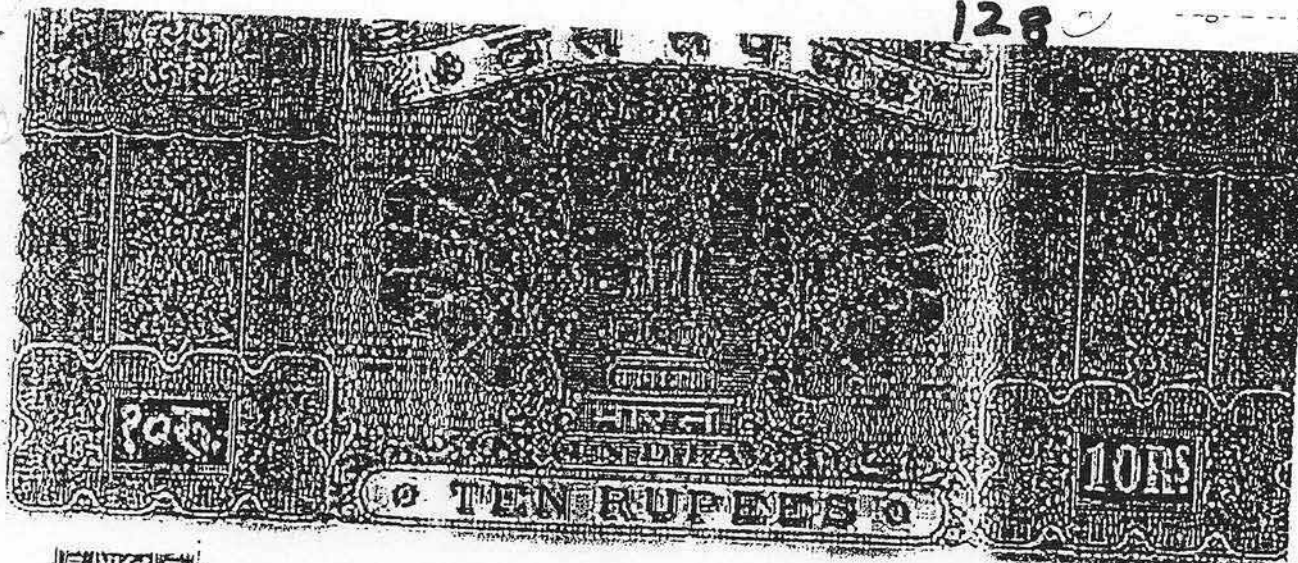
VERIFICATION

I, the above named deponent, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therein.

Verified at New Delhi this the 3rd day of April, 2004.



Sonia Gandhi



Before the Returning Officer
for election to house of People [Lok Sabha]
from 19 - Rae Bareilly Parliamentary Constituency

I, Sonia Gandhi, wife of Late Shri Rajiv Gandhi, aged about 58 years, resident of 10, Janpath, New Delhi, candidate at the above election, do hereby solemnly affirm and state on oath as under:-

(1) The following case(s) is/are pending against me in which cognizance has been taken by the court:-

That no Case is pending against me in which cognizance has been taken by the Court.

(i) Section of the Act and description of the offence for which cognizance taken:

NOT APPLICABLE

(ii) The Court which has taken cognizance: NOT APPLICABLE

(iii) Case No: NOT APPLICABLE

(iv) Date of order of the Court taking cognizance:

NOT APPLICABLE

(v) Details of appeal(s)/ application(s) for revision, etc., if any, filed against above order taking cognizance: NOT APPLICABLE

B. DETAILS OF IMMOVABLE ASSETS

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S. No	Description	Self	Spouse (X) Name(s)	Dependent-1 Name	Dependent-2 Name	Dependent-3, etc. Name
(i)	Agricultural Land - Location(s) - Survey number(s) - Extent (Total measurement) - Current market value	Village Dera Mandi - 3 Bighas in Kh. Nos. 214, 211, 210, 209, 207, 213, 208, 206, 204, 21, 205, 203, 212. Village Sillanpur - 12 Bighas & 18 Annas in KIL Nos. 208/22, (1- 6), 214 (4-6), 209/12 (0-4), 211/3/2 (3-12), 212 (0-3), 208/21 (0- 4), 209/11 (0-8), 211/3/1 (0-12). Total Value - Rs 2,19,300/- (As per Wealth Tax Return)	NA	NA	NA	NA
(ii)	Non-Agricultural Land - Location(s) - Survey number(s) - Extent (Total measurement) - Current market value	NIL	NA	NA	NA	NA
(iii)	Buildings (commercial and residential) - Location(s) - Survey number(s) - Extent (Total measurement) - Current market value	NIL	NA	NA	NA	NA
(iv)	Houses/Apartments - Location(s) - Survey number(s) - Extent (Total measurement) - Current market value	NIL	NA	NA	NA	NA
(v)	Others (such as interest in property)	Ancestral house property in India Value - Rs 12.45 Lakhs. (As per Wealth Tax Return)	NA	NA	NA	NA





(3) I give here in below the details of my liabilities/ over dues to public financial institutions

and government dues:-

S.No	Description	Name and address of Bank Financial Institution(s) Department(s)	Amount outstanding as on 31.03.04
(a)	(i) Loans from Banks	NIL	NA
	(ii) Loans from financial institutions	NIL	NA
	(iii) Government dues	NIL, No dues Certificate enclosed	NA
	a) dues to departments dealing with government accommodation		
	b) dues to departments dealing with supply of water	NIL	NA
	c) dues to departments dealing with supply of electricity	NIL	NA
	d) dues to departments dealing with telephones	NIL	NA
	e) dues to departments dealing with government transport (including aircrafts and helicopters)	NIL	NA
	f) Other dues, if any	NIL	NA
(b)	(i) Income Tax including surcharge [Also indicate the assessment year upto which Income Tax Return filed. Give also Permanent Account Number (PAN)]	Assessment year 2003-2004 IT Paid - Rs. 91,963/- PAN - AABPG-2947E	NA
	(ii) Wealth Tax [Also indicate the assessment year upto which Wealth Tax return filed.]	Assessment year 2003-2004 Wealth Tax Paid - Rs. 12,159/-	NA
	(iii) Sales Tax [Only in case of proprietary business]	NA	NA
	(iv) Property Tax	NA	NA

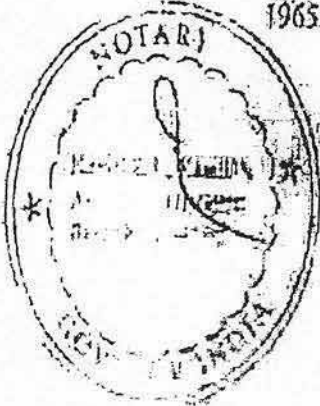
Singh

A-6
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(4) My educational qualifications are as under:-

(i) Three Years course in foreign languages (English and French) completed in 1964 at Istituto Santa Teresa, Via Santa Teresa, 10 Turin.

(ii) Certificate in English from Lennox Cook School, University of Cambridge, Completed in 1965.



[Signature]

DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 3rd day of April 2004.

solemnly affirmed before me
read over and explained to the deponent

Notary Public

3/4/04

[Signature]

DEPONENT

Identified the deponent
has signed in my presence

[Signature]
APRIL 4 2004
A-6

Subject: FW: Rajiv Gandhi

Date: Sat, 23 Feb 2002 17:49:12 +0530

From: "Subramanian Swamy" <ilky@satyam.net.in>

To: "JANATA PARTY" <janata@eth.net>

-----Original Message-----

From: Todisco Margot (tod), ZO KKC [mailto:tod@ringier.ch]

Sent: Thursday, April 05, 2001 3:14 PM

To: 'swamy@fas.harvard.edu'

Subject: Rajiv Gandhi

Dear Sir

We refer to your E-Mail of April 4, regarding an article in our magazine Schweizer Illustrierte of November 11, 1991. In this article - Fluchtgelder - Die Schweizer Konten der Diktatoren - is Rajiv Gandhi named with tot. 2.5 Milliarden CHF on secret accounts. If you want this magazine, please indicate your exact address.

Yours faithfully

Ringier Ltd.

Margot Todisco

Margot Todisco / KKC 1 phone: +41 62 746 38 31
Ringier AG fax: +41 62 746 35 71
Brühlstrasse 5 <mailto:margot.todisco@ringier.ch>
CH-4800 Zofingen <http://www.ringier.ch>

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**SCHWEIZER
ILLUSTRIE**



Ski-Abenteuer

mit Bernhard Russi, Zoe Haas, Dani Mahrer, Art Furrer,
Ariane Furrer und Conradin Cuthenen

P. 40
P. 41

weisen. Einziehungsverfahren unterliegen, bekämen die von ihrem Mann gehörten Millionen die Philippinen.

«Ich bin nicht zurückgekommen, um mich zu rächen. Ich will Gerechtigkeit», verkündete Imelda bei ihrer Ankunft voller Pathos. Und tatsächlich stellte sie sich tags darauf beim Staatsanwalt, damit dieser ein Strafverfahren wegen «Verschwendung und Veruntreuung von Staatsgeldern» gegen sie eröffnen konnte. Doch nicht späte Einsicht oder gar Reue trieb die Diktatoren-Witwe dazu, sich zu stellen. Ein Trick ihrer Anwälte, das Verfahren zu verzögern. «Während wir mit dem Einziehungsverfahren relativ rasch zu einem Urteil gekommen wären», erklärt Salvioni, «dauert das Strafverfahren sehr viel länger. Offensichtlich versucht Imelda noch einmal, das

Ganze auf die lange Bank zu schieben.» Denn: Auch wenn der philippinische Staat im Einziehungsverfahren recht bekommt, fließt kein einziger Franken nach Manila, solange das Strafverfahren gegen Imelda hängig ist.

«Frau Marcos», so Salvioni, «hofft auf die Präsidentschaftswahlen im kommenden Mai. Darauf, dass dann ein neuer Präsident an die Macht kommt, mit dem sie sich auf ihre Art arrangieren kann.»

Tatsächlich ist es unwahrscheinlich, dass Frau Aquino auch nach den Wahlen vom kommenden Frühjahr noch Präsidentin der Philippinen sein wird. Und ob ihr Nachfolger ähnlich unbittlich auf die Rückgabe der Millionen drängen wird, ist zweifelhaft.

Just in den Tagen, als Imelda und ihre Anwälte diesen neusten Trick zele-

brierten, legte über den Südwesten des Inselreichs der Tropensturm «Thelma» und riss mehr als 6500 Menschen in den Tod. Am schlimmsten wüteten die Unwetter auf Leyete, der Geburtsinsel von Imelda. Die internationalen Hilfsorganisationen riefen in aller Welt zu Spenden auf. Millionen werden nötig sein, um die Folgen dieser vierten Naturkatastrophe, welche die Philippinen in nur 16 Monaten heimsuchte, zu lindern.

Guy Fontanet, der Genfer Anwalt von Corazon Aquino, hat einmal gesagt: «Die Eidgenossenschaft unterstützt ein Schulprojekt auf einer Insel mit einer Million Franken jährlich. Zur gleichen Zeit liegen 500 Marcos-Millionen auf Schweizer Banken. Die würden allein 25 Millionen Franken Zins abwerfen. Das ist doch unglaublich.»

Fontanet ist überzeugt: «Dieses Geld gehört dem philippinischen Volk.»

Und möglicherweise liegen auf Schweizer Banken nicht «nur» die 500 Millionen, die zurzeit eingefroren sind. Deutsche Medien warteten vergangene Woche mit der «Enthüllung» auf, im Zollfreilager des Flughafens Zürich-Kloten – unter einer Kontonummer der Schweizerischen Bankgesellschaft – würden 1080 Tonnen pures Gold im Wert von fast 18 Milliarden Franken liegen. Dies zumindest behauptet der deutsch-australische Abenteurer und Gelegenheitsagent Reiner Jacobi, der in Aquinos Auftrag und auf Provisionsbasis nach Marcos-Schätzen jagt.

Die SBG hingegen dementiert vehement: «Das ist grotesk.» Aber Jacobi, der im Sommer kurzzeitig festgenommen worden war, weil er versucht haben soll, in die Computersysteme von Schweizer Grossbanken einzudringen, insistiert: «Ich

Die Sch

250 bis 300 Milliarden Franken aus der Welt liegen auf unseren Banken, hat die US-Beraterfirma McKinsey & Co. berechnet. Das ist ein blutiger Diktator.

Mit dem Fluchgeld, das auf Schweizer Banken liegt, so Experten, könnte die Hälfte der Schulden der Drittweltländer getilgt werden. Marcos war beileibe nicht der einzige – ein Schweizer Kontohat jeder Diktator, der was auf sich hält.



Sese Mobuto, Zaire

Soll 6 Milliarden Franken auf Schweizer Konten versteckt haben.

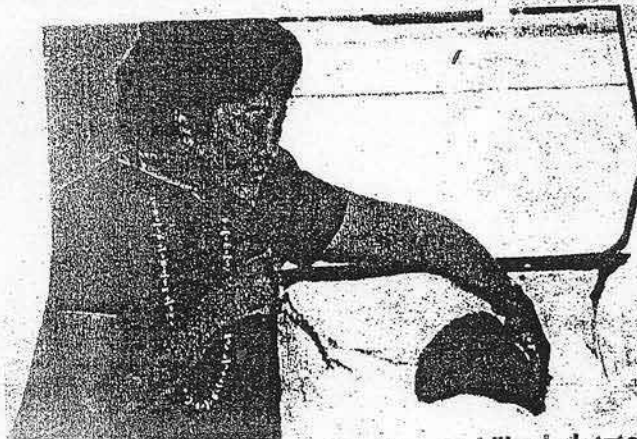


Suharto, Indonesien

Tot. Hatte 25,5 Milliarden Franken in der Schweiz und England.



Der Anwalt und seine Klientin: Sergio Salvioni soll für Corazon Aquino die Marcos-Millionen «auftauen».



41. Ms. Sonia Gandhi is habitually committing acts of corruption since 1972. On November 19, 1974, I brought it to the attention of the Rajya Sabha that Ms. Sonia Gandhi, then an Italian citizen had functioned as a benami insurance agent of public sector insurance companies, and giving her address as 1, Safdarjung Road, New Delhi which was then the official residence of the Prime Minister of India. She thus committed an offence under FERA. The then Prime Minister Mrs. Indira Gandhi subsequently informed the Rajya Sabha that following my disclosure, Ms. Sonia Gandhi had resigned from this agency earning commissions.
42. Between January 25, 1973 and January 21, 1975 she held a post of Managing Director of Maruti Technical Services on a salary despite it being an offence under FERA. But then she had become Managing Director of Maruti Heavy Vehicles Pvt Ltd with an even bigger remuneration. For neither post she had the necessary qualifications having never passed even High School. The Justice A.C. Gupta Commission appointed in 1977 by the Janata Party Government found her guilty of multiple offences under FERA and IPC.
43. In 1980 and January 1983 Ms. Sonia Gandhi then still an Italian citizen enrolled herself as a voter in the New Delhi constituency despite having been struck off the list in 1982 upon the ERO receiving a complaint from a citizen. She thus committed an offence under Section 31 of the Representation of the People's Act read with Form 4 of the Registration of Electors Rules(1960).
44. Ms. Sonia Gandhi's Indian citizenship acquired in record speed in April 1983 is vitiated by her incomplete answers to mandatory questions in the citizenship forms. She did not submit documents from the Italian government of relinquishing her Italian citizenship required for Indian citizenship, stating in the Form that it was 'not applicable' [Annexure 12]. Italian Embassy in New Delhi simply affirmed what she told them and hence that cannot be taken as a valid document of relinquishment for the purposes of citizenship. She also retrieved her Italian passport in 1992 after citizenship laws in Italy were amended which under Section 10 of the Citizenship Act (1955) means cancellation of her Indian citizenship.

weizer Konten der Diktatoren



**Idi Amin,
Uganda**

Geschätztes Vermögen in der Schweiz: einige Millionen Franken.



**Anastasio Somoza,
Nicaragua**

Tot. Grösster Teil seiner 750 Millionen Franken lagern in der Schweiz.



**Jean-Claude Duvalier,
Haiti**

750 Millionen Franken Auslandvermögen. Grosser Teil in der Schweiz.



**Manuel Noriega,
Panama**

15 Millionen Franken aus dem Drogenhandel, Teile davon in der Schweiz.



**Nicolae Ceaușescu,
Rumänien**

Tot. Geschätzter Goldschatz in der Schweiz: 600 Millionen Franken.



**Haile Selassie,
Äthiopien**

Tot. 22,5 Milliarden Franken Auslandvermögen. Grosser Teil in der Schweiz.



**Abu Nidal,
Palästinenser**

Millionen auf Schweizer Konten unter dem Namen von Freunden.



**Jaafar Numeiri,
Sudan**

Hat bis 1985 den Schweizer Banken 34 Millionen Franken anvertraut.



**Saddam Hussein,
Irak**

Guthaben auf Schweizer Konten: 700 bis 800 Millionen. Mindestens.



**Jean B. Bokassa,
Zentralafrika**

Fast alle Wertgegenstände, vor allem Diamanten, in Schweizer Safes.



**Rajiv Gandhi,
Indien**

Tot. 2,5 Milliarden Franken auf indischen Geheimkonten in der Schweiz.



**Reza Pahlavi,
Iran**

Tot. 5,7 Milliarden Franken verteilt auf 25 Schweizer Banken.

KGB helped firm controlled by Rajiv's family

From Vladimir Radyuhin

MOSCOW, July 3.

The Russian Foreign Intelligence Service admits the possibility that the KGB could have been involved in arranging profitable Soviet contracts for the company controlled by the Rajiv Gandhi family.

"I think the KGB, acting on instructions from the Communist Party Central Committee, did take some part in the affair, especially in view of the ideological confrontation that prevailed in the world at that time," said Mrs.

Tatiana Samolis, spokeswoman for the Russian Intelligence Service, which has succeeded the KGB. She made the admission to *The Hindu* after a press briefing at which she confined herself to citing an earlier statement by a Russian Foreign Ministry spokesman. The Foreign Ministry had said it could neither confirm nor deny reports that Rajiv Gandhi had contacts with the KGB.

Last week a Russian daily had published the text of an old KGB letter to the Central Committee of the Soviet Communist Party which said that Rajiv Gandhi had conveyed through the KGB his "profound gratitude for assistance to the Prime Minister's family in the form of commercial deals between the Indian company it controls and Soviet foreign trade organisations." The late Prime Minister was also alleged to have specified that "a considerable share of the money received through this channel has gone to support the party of R. Gandhi."

However, Mrs. Samolis did not think the KGB had played first fiddle in the affair. "I would above all point to the State System and the party that was its backbone. The KGB could not stretch its arms farther than the party would let it," she said:

Yet another Indian scandal?

MOSCOW, April 5 (UNI):

A popular Moscow weekly has claimed to be in possession of documents which "cast shadow on the mutual ties with some of the Indian leaders."

The *Argumenty i Fakty* (arguments and facts), in its latest issue, has published the text of a secret letter sent to the CPSU central committee by former KGB chief V. Chebrikov in December 1985 asking for 3.2 lakh roubles in foreign currency (five lakh US dollars at that time) "for ensuring special actions and measures to consolidate the outcome of the official visit of prime minister Rajiv Gandhi to the Soviet Union in 1986."

By the resolution of the CPSU central committee No. 11228/3 DTD 20.12.85 and the directive No. 2633 Rs. DTD 20.12.85 of the USSR council of ministers, the amount was allotted to the 17th department of the first main administration of the KGB (overseas intelligence) dealing with India, *Argumenty i Fakty* weekly says.

In the same letter, written eight months after Mr Mikhail Gorbachev assumed the top party post, Mr Chebrikov says that beginning from 1971, the Central Committee of the Communist Party of the Soviet Union (CPSU) had been allotting funds to finance 'controlled media organs, Indian social organisations and individual politicians in India, who were used for various acts and to exert influence in favour of state interests of the USSR.

The KGB chief has also reported that the funds amounting to 3.2 lakh roubles in foreign currency earmarked for the year 1985 by the CPSU CC resolution No. 11187/22 OP DTD 10.12.84 have been fully utilised for the above said purposes.

Commenting on this, the weekly says, "we understand that in any country international activities are controlled by the intelligence services and our country is not an exception. But the involvement of the CPSU gives this problem a different 'shade'.

When contacted over phone, one of the officials of the weekly, who refused to disclose his name, said the documents in the possession of the *Argumenty i Fakty* mainly related to non-CPI media and politicians.

Annexure 28 Yet another Indian scandal?

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Rajiv Gandhi received funds from USSR: Report

By JYOTI MALHOTRA

MOSCOW, June 26.

FORMER Prime Minister Rajiv Gandhi received funds for his party from the Soviet Union, a Russian newspaper here has said.

An article published in the *Izvestia*, an evening paper from Moscow, has said the former KGB chief, Mr V. Chebrikov, in a letter to the central committee of the Communist Party of the Soviet Union (CPSU), said that Rajiv Gandhi "expressed deep gratitude for the help being received by the Prime Minister's family through commercial deals, of an Indian firm controlled by it, with Soviet foreign trade organisations."

Mr Chebrikov's letter to the CPSU does not name the year in which the money was allegedly received by the former Prime Minister, nor does it give other details such as the name of the Indian firm or Soviet trade organisations it did business with.

But the letter adds: "In a confidential message, Mr Gandhi informed that the major part of these resources were used to support the party of Mr Gandhi."

LETTER REFERENCE: The article is written by Evgenia Albats, a correspondent of the *Moscow News* paper, and gives detailed references from the KGB archives in which Mr Chebrikov's letter is kept: "From the letter of the KGB, chairman V. Chebrikov, to the central committee of the CPSU no. 349-CH/OV, archives of the KGB USSR, case no. 131, volume one, pages 103-104".

Indian embassy officials here were not available for comment.

The archives of the KGB and the CPSU were selectively opened about a fortnight ago in Moscow,

and stories about the funding of various governments and communist parties around the world have been appearing regularly in Russian newspapers here.

The reference to Rajiv Gandhi is part of an article on various leaders who sought help from the former Soviet Union. Even the US senator, Mr Edward Kennedy, the article alleges, asked the KGB to assist the firm of a friend.

The correspondent is surprised that even an American Democrat like Edward Kennedy could have accepted help from the KGB, especially as he must have been in the forefront of the condemnation of the "Gulag Archipelago".

She goes on to add that "in human terms, the reaction of Rajiv Gandhi — again expressed through the KGB — can be understood", meaning that it could be understood that Third World politicians received money from the KGB as they were using it in their war against "US imperialism".

MANY MORE: Other leaders mentioned in the article as having taken money from the KGB, are a former Sri Lanka prime minister, Mrs Sirimavo Bandaranaike and communist party leaders of the US. On the other hand, the former Russian husband of Christina Onassis is also believed to have put several thousand dollars into KGB coffers, the article adds.

This is the second time since the disintegration of the Soviet Union that information on Indian leaders has appeared in the Russian press. In February, the *Ogonyok* magazine had reported that the Communist Party of India (CPI) received money from the CPSU in 1990.

Russians themselves are divided over the opening of the archives, and question the very purpose of selectively "leaking" information that some see as part of a deliberate American smear campaign against the leaders of the former Soviet Union and communist ideology itself.

Some have wondered whether washing dirty linen in public would be beneficial for future relations with countries, especially those who have been old allies.

Others ask if it is worthwhile to resurrect allegations about the dead especially since they have no opportunity to reply.

Counterposed to this is the argument that Russian citizens have a right to know about the activities of their state during the 70 years of communist rule, and by the exposure of such "misdeeds" prevent their recurrence.

PTI Adds: A Russian foreign ministry spokesperson when asked about the authenticity of the claims in the article refused to confirm or deny them on the ground that neither the then Soviet foreign ministry nor its representatives abroad were aware of such transactions.

He, however, appealed to the Russian media to consider Russian interests before publishing material based on the archives of the CPSU and former KGB.

A political analyst here, who requested anonymity, questioned the veracity of the claims in the article.

The analyst also said that many field agents often exaggerated the amounts paid and the level at which it was given in order to inflate their own importance.

27/6/92 T01

KGB slush money deals haunt leaders

Arindam Sen Gupta

NEW DELHI 22 FEBRUARY

A NUMBER of veteran politicians, both in the Congress(I) as well as in opposition parties, are in a tizzy as information is trickling in about the recipients of funds from the erstwhile Soviet intelligence agency, the KGB.

Known as the 'KGB papers', the de-classified documents of the notorious agency, has already taken a toll in Britain. The former Labour Party leader, Mr Michael Foot, has been named as an important KGB contact in the '60s, who received funds from the agency for the Tribune, a newspaper of which Mr Foot was then the managing director.

Well-placed political and bureaucratic sources here say that a large number of Indian politicians, bureaucrats and academicians are guilty of similar or worse indiscretion. It is said that the KGB was also a source for election funding in India and the "bagmen" are feeling particularly vulnerable now. If all these names came out, it could mar many a reputation and become the scandal of the decade.

Already a few names are being

mentioned in hushed tones, although in the absence of documentary evidence, this could be part of disinformation campaign. But still, there is no getting away from the fact that the 'KGB papers' could cause the political ruin of several ageing politicians and tar the fair name of other respected Indian personalities.

The KGB documents were de-classified soon after August 1990 by the Russian president, Mr Boris Yeltsin. His main aim was to discredit the Soviet communists and, consequently, the first information that came out was about the KGB's funding of 'fraternal' communist parties in other countries.

By the time Mr Yeltsin realised that the KGB documents could also hit unintended targets, the process of making them public had acquired a momentum of its own. For instance, finding a ready market for these documents in the West, many jobless former KGB agents are said to have sold each sheet in their possession for as little as \$50.

Most of these documents have been bought by western governments and publishing houses in the London and New York. While their deciphering as also their

translation has taken time, the initial revelations have expectedly come about western leaders. But sooner or later, the India papers in these documents are expected to come out. With elections round the corner, political rivalry might become a catalyst for their early disclosure.

Apart from politicians who might have received funds from the KGB, either to feather their own nest or that of their party, bureaucrats and academicians are also said to have received pecuniary benefits from this agency. However, some of them might find their names in the KGB records for wrong reasons.

As a top official explained, a number of officials had been approached by the KGB in the past. Some of them even reported the overture to the top political executive, and in certain cases were told to "play along" in order to find out what exactly the KGB was up to. In the course of "playing along", money had also changed hands in a few instances.

While this money might have been deposited with the government's secret fund, the names of the officials would have entered the KGB records. Now with the

concerned prime minister/s dead, and documents showing pecuniary gains for certain bureaucrats from dubious foreign sources, these officials might have to pay for no fault of theirs.

Another top official, who has been a keen Moscow watcher, said that apart from the 'KGB papers', there was another source of information to fear — the CPSU central committee archives which have been made public.

A copy of most KGB documents were also kept in these archives ever since 1967, when the CPSU sent one of its trusted men, Yuri Andropov — who later became the Soviet president — to head the KGB.

Apparently, the archives contain the names of many Indians, most of them academicians. This is because the Soviets often funded the research or publication of many Indian academicians, which were passed off as Soviet studies, but were really publicity jobs for Moscow.

Politicians are currently keeping their fingers crossed, hoping the India-related documents never come out, but with the KGB dossiers in wide circulation, this might prove a faint hope.

Economic Times

Feb 23, 1992

Envoy Networks

ANNEXURE
978 262 9643

P. 2

From: Ms. Yevgenia Albats: The State within the State:
KGB and Russia

Publisher: Farrar, Straus, and Giroux, December 1994
ISBN 037 452 7385

Realities of the Glasnost Era

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U.S. Communist chief Gus Hall was notified of an allocation of \$500,000; in 1989, the U.S. Communist Party was awarded \$2 million.)²⁴ These are not poor countries; this certainly wasn't charitable aid.

A letter signed by Viktor Chebrikov, who replaced Andropov as head of the KGB in 1982, noted: "The USSR KGB maintains contact with the son of Premier Minister Rajiv Gandhi [of India] . . . R. Gandhi expresses deep gratitude for benefits accruing to the Prime Minister's family from the commercial dealings of an Indian firm he controls in cooperation with Soviet foreign trade organizations. R. Gandhi reports confidentially that a substantial portion of the funds obtained through this channel are used to support the party of R. Gandhi."²⁵

The practice of supporting foreign Communist parties continued into the perestroika era. In 1991, *Moscow News* published a document recording the transfer of 1,189,213 Finnish marks to the leadership of the Communist Party of Finland [Unity].²⁶ The publication of this document had unexpected ramifications. Its signer, Vladimir Silvestrov, a colonel of FCD's Third Department (the UK, Australia, New Zealand, and the Scandinavian countries), was still working as the KGB's deputy resident in Finland under diplomatic cover. The Finns, who for so long had put up with the Soviet Union's unneighborly behavior (in the summer of 1991, forty out of fifty officers in the Soviet embassy in Helsinki were KGB or GRU), suddenly lost their patience and ordered the "diplomat" out. Silvestrov was recalled within a week.²⁷

In the last ten years of the USSR's existence, more than \$250 million in cash found its way abroad in the briefcases of intelligence agents. (And this still leaves billions of dollars of interest-free loans to "friends" and supplies of "special equipment" (arms) in exchange for, say, raisins.) This, from a country where two-thirds of the population was living below the poverty line. My grandmother, who worked for the state for her entire life, received a pension of 43 rubles a month, the equivalent of 480 dollars a year. But at the same time, the General Secretary of the Central Committee of the

10. *Materialy Komissii VS SSSR po rassledovaniyu obstoyatelstv avgustovskogo perevorota* [Materials of the USSR Supreme Soviet Commission to Investigate the Circumstances of the August Coup], d. no. 4, t. 5, l.d. 331.
11. *Rossiyskaya gazeta*, 29 November 1991.
12. *Ekspress-khronika*, no. 14, 2 April 1991.
13. Igor Gamayunov, "Kak izmenyayut KGB" [How the KGB is Being Changed], *Yunost* [Youth], no. 6 (1991), p. 90.
14. *Moskovskie novosti*, no. 24, 24 June 1990, p. 11.
15. Alexander Kichikhin, *Stolitsa* [Capital], no. 1 (1991), p. 25.
16. KGB Col. Mikhail Lyubimov (Reserves), "Razbavani bez dokazatelstv" [Demoted Without Proof], *Moskovskie novosti*, No. 27, 8 July 1990, p. 4.
17. *Moskovskie novosti*, no. 24, 1990.
18. *Moskovskie novosti*, no. 44, November 3, 1991.
19. Unpublished interview by Natalya Gevorkyan with Jan Ruml in Prague, July 1990. Printed with permission of Gevorkyan.
20. *Stenogramma parlamentskiy slushaniy po rassledovaniyu finansovoy deyatelnosti KPSS* [Transcript of parliamentary hearings investigating the financial activity of the CPSU], 10 February 1992; author's interview with Alexei Pushkev, former employee of the International Department of the Central Committee of the CPSU, March 1992.
21. KGB Archive, f. 4-OS, op. 11, por. no. 7, d. OP-3, t. 4, l.d. 253.
22. KGB Archive, f. 4-OS, op. 11, d. OP-1, t. 8, l.d. 41.
23. Central Committee Special File. Copy of original, author's archive.
24. Central Committee Special File. Copy of original, author's archive.
- ✓ 25. KGB Archive, f. 5, op. 6, por. no. 12, d. 131, t. 1, l.d. 103-104.
26. Yevgenia Albats and Natalya Gevorkyan, "Den'gi dlya prizraka" [Money for a Ghost], *Moskovskie novosti* [Moscow News], no. 49, 8 December 1991, pp. 1, 5; also *Vypiska iz spetsialnoy knigi uchyoita Sekretariata Mezhdunarodnogo Otdela TsK KPSS* [Excerpt from special records book of the Central Committee International Department Secretariat], copy of original, author's archive.
27. Marat Zubko, "Khelsinskiy filial KGB pri svete dnya" [The KGB's Helsinki Branch in the Light of Day], *Izvestia*, no. 87, 11 April 1992.
28. *Stenogramma parlamentskiy slushaniy po rassledovaniyu finansovoy deyatelnosti KPSS* [Transcript of parliamentary hearings investigating the financial activity of the Communist Party of the Soviet Union], 10 February 1992.
29. From a letter from V. Falin, head of the Central Committee's International Department and V. Vlasov, head of the Central Committee's Socioeconomic Policy Department to the Central Committee leadership, dated 19 February 1991. Copy of original in author's archive.
30. Copy of original in author's archive.

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नेता प्रति पक्ष
राज्य सभा

LEADER OF OPPOSITION
RAJYA SABHA

No. 2463/WP/RS/05

May 6, 2005

Dear Dr Swamy,

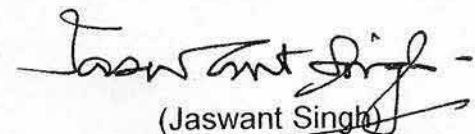
I have received your letter of May 2, regarding the photocopied extracts of "The State Within the State: KGB in Russia", and some allegations contained in it. I do recollect receiving it from you. I also recollect asking the Ministry to obtain the needed confirmation from Moscow, through appropriate diplomatic channels, so that the veracity or otherwise of the allegations and the documents could be determined.

As these allegations were contained in the cited book, and as they related to the days of USSR, the advice received from Moscow was that the appropriate agency for seeking clarification on them, can only be the counterpart of KGB. In consequence, I had advised the Ministry to ask the R&AW to pursue the matter further.

To the best of my recollection, this might have got done but with what results I have no knowledge of.

With best regards,

Yours sincerely,


(Jaswant Singh)

Dr. Subramanian Swamy,
A-77, Nizamuddin (East),
New Delhi - 110013.

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Annexure 28

Secret

UNOFFICIAL
(TRANSLATION)
KOMITET GOSUDARSTUENNOY BEZOPASNOSTI

2, Dzerzhinsky Square
Moscow, USSR

13.12.85

V. Chebrikov
Chairman

To: Central Committee
Communist Party of Soviet Union
Moscow,
USSR.

Ref: CPSU Central Committee Resolution No. 11187/22 OP
dated 10.12.84

Respected Members:

Beginning from 1971, the Central Committee of the Communist Party of the Soviet Union had been allotting funds to finance individual politicians in India, Indian social organizations and 'controlled media organs', who were used for various acts and to exert influence in favour of state interests of the USSR. In the annual allocations for 1985 of above reference, funds amounting to 3,20,000 Rubles in foreign currency have been fully utilized for the above said purposes.

The 17th Department of the First Chief Directorate of the KGB (dealing with India) requests further allotment of 3,20,000 Rubles in foreign currency for ensuring for the same purpose, special actions and measures to consolidate the outcome of the official visit of Prime Minister Rajiv Gandhi with his wife Sonia Gandhi to the Soviet Union in 1986.

The USSR KGB maintains contact with the son of Prime Minister Rajiv Gandhi.

..2..

R.Gandhi expresses deep gratitude for benefits accruing to the Prime Minister's family from the commercial dealings of an Indian firm he controls in cooperation with Soviet foreign trade organizations. R.Gandhi reports confidentially that a substantial portion of funds obtained through this channel are used to support the party of R.Gandhi.

Faithfully Comrades

V.Chebrikov
Chairman

Approved by the CPSU Central Committee
Resolution No.11228/3 dated 20.12.85
Directive No.2633 Rs. dated 20.12.85
of USSR Council of Ministers.

Text in Russian available in
"Letters of the KGB Chairman
to the Central Committee of the CPSU"
KGB Archives, No.349-CH/OV. f.5, op.6, por.no.12,
Case No.131, Volume One, pages 103-04

В нашем распоряжении есть документ, по-своему оттеняющий взаимоотношения с некоторыми руководителями Индии. Мы отдаем себе отчет, что международная деятельность в любой стране всегда контролируется разведкой. И наша страна — не исключение. Но участие в этой области ЦК КПСС по-своему «расцветивает» всю проблему. А tandem КГБ — КПСС — это вообще специфика нашего бывшего строя...

«В ЦК КПСС. В соответствии с решением ЦК КПСС ежегодно, начиная с 1971 г., КГБ СССР выделяет средства для оказания финансовой помощи контролируемым органам печати, общественным организациям и отдельным деятелям Индии, возможности которых используются для осуществления акций, влияющих на интересы Советского Союза. Выделенные на указанные цели в 1985 г. 320000 инвалютных рублей (постановление ЦК КПСС от 10.XII.1984 г. № 11187/22 оп) полностью израсходованы. Для обеспечения печатных и мероприятий по закреплению итогов официального визита премьер-министра Р. Ган-

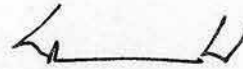
ди в Советский Союз КГБ просит выделить на 1986 г. 320000 инвалютных рублей. Проекты постановления ЦК КПСС и распоряжения Совета Министров СССР прилагаются. Просим рассмотреть.

Председатель Комитета
В. Чебриков.

Верно: нач-к направления
17 отдела ПГУ КГБ СССР
полковник Е. М. Морозов.
13.12.85 г.»

В соответствии с этим письмом деньги были выделены (см. постановление ЦК КПСС № 11228/3 оп от 20.XII.1985 г. и распоряжение СМ СССР № 2633 рс от 20.XII.1985 г.).

45. All these facts stated above were put together and published in USA in a full page advertisement in the New York Times in 2008 by NRIs N. Kataria and others. The Congress Party unit in USA thereafter engaged the most expensive law firm and filed a \$ 200 million defamation suit. However Ms. Sonia Gandhi refused to appear in the witness box and be cross examination. Therefore, Justice Emily Goodman of the New York State Supreme Court dismissed the suit since defamation suits in law have to be filed by the person claiming to be defamed, and therefore cannot be assigned to others [Annexure 13]. Ms. Sonia Gandhi had a case to rebut these facts, then why she failed to turn up in court?



(SUBRAMANIAN SWAMY)

146 Annexure 10

said it wanted information beyond this — given that several rich Indians had stashed money abroad in violation of various laws. “They are amenable to the laws of this country,” the court said, reminding the law officer that the petition had been pending two years.

"We have a list containing some names, there are some figures known to you. What are the inquiries made about these individuals and the nature of the contents you know," the bench pointedly asked the solicitor-general.

Unquote

[<http://www.asianage.com/india/sc-govt-you-know-their-names-what-will-you-do>-455]

Hopefully the Liechtenstein saga of denial, procrastination; prevarication, and outright half truths by the Government will be a wakeup call to supreme Court and to large sections of Indian middle class who pay their taxes and who expect the Government to protect, preserve and safe guard their hard earned freedom.

XVII. The Hasan Ali Ali Affair -- a multi-billion dollar cover up -- the smocking gun

Interestingly, in the well-known case of Hasan Ali Ali – on record a horse breeder from Pune - who was found to have Swiss accounts, the response of the Union government in the Supreme Court treats is as if it were just tax case. It indicated that tax demands of Rs 71,848 crore have been raised against the said person, his wife and other associates. The facts that have emerged in the Hasan Ali Ali case clearly lead to the disconcerting inferences that ruling party leaders were involved

in Havala and stashing away national wealth illegally abroad; that there was undeniable nexus between politicians and criminal world; that the probe was derailed, stymied and rendered meaningless by delay and prevarication thanks to the involvement of the ruling party leaders; that the present government has no interest in recovering back the national wealth stashed abroad; that on the contrary, it is clearly interested in not exposing those who had stashed their wealth abroad.

1. Hasan Ali case – an introduction:

The Hasan Ali ['Ali' for short] case, which broke out in the year 2007, was not only sensational, the facts that tumbled out of the Enforcement Directorate probe in the public domain into the media clearly showed that:

- a) Ali had a criminal record starting with attacking his neighbour, when he was grown up and 31, with acid and disfiguring him causing 30 stitching on his face for which probably he was neither arrested or convicted;
- b) His record brought out in the media showed that he was a small time businessman from Hyderabad and began his criminal activities by cheating banks and private individuals;
- c) He was overtly involved in businesses like car renting, horse racing and stud farm; and the last business was the one he was doing when the Income Tax Department and Enforcement Directorate struck at him January 2007;
- d) Ali began to be involved in Havala business in billions in 1990s;
- e) Ali was involved with Adnan Khassogi, the international arms dealer, who was found in the probe into the assassination of Rajiv Gandhi in 1991 to have supplied to arms to LTTE, in business and finance from 1982;

- f) He was involved with politicians, particularly the ruling congress party leaders;
- g) He had respectable local associates like Kasinath Tapuria, a Kolkata based businessman, and his wife to front for him;
- h) He, who had nothing twenty years back, had billions in his and his associates' account by end 2006;
- i) The probe into him was delayed and rendered directionless and almost purposeless, which indicated that the government was keen, even desperate, to bury the Ali case as detailed herein later;
- j) The Solicitor General of India has in an extraordinary step written to the Government of India that the Ali case must be investigated from national security angle also, which he could not have done without some critical material that must have been brought to his attention;
- k) Yet, the attitude of the government to Ali probe is a clear testimony to the fact that the government, far from pursuing and bringing out the national wealth stashed away abroad, is aiding and collaborating with the buccaneers who have criminally misappropriated the national wealth.

The shocking details of the Ali probe tumbled into the public domain through the media obviously because as the officials, who were investigating the case found that the political establishment was not keen to pursue the case, began to leak out the details. Whatever information the public has today is not through any detail given out by the government to Parliament or to the public. The media reports, sourced in the details leaked out to the media by the Enforcement Directorate and the Income Tax department are the only information available to the people. Yet the details which have appeared in the

last four years, when seen collectively, shows a shocking fraud on the people of India by the ruling establishment which has clearly subverted the Ali money laundering probe involving over \$8 billions.

2. From petty crimes to global havala in billions

Ali's record showed the stunning transformation of a petty local criminal of Hyderabad into a global havala operator in a span of two decades. An important fact, which emerges in the media reports, is that Ali was but not just a white collar criminal. Besides the acid attack in which he disfigured and caused 30 surgeries on his doctor neighbour, when he cheated some four persons to the tune of over 70 lacs in the year 1991 promising them that he would give them banks draft in Dollars for cash paid to him in rupees so that they could take advantage of the voluntary disclosure scheme then in force to bring in undisclosed monies from abroad, none of them were willing to pursue the case against him out of fear. This meant that he was connected to the underworld. The history of Ali, his evolution into a global havala operator, and the details of the case against him are brought out in an investigative reports appearing in different newspapers and magazines since 2007.

The recent issue of **India Today** [07-02-11] gives details of the five Letters Rogatory sent by India [in 2008] to different countries like US; UK; Singapore UAE and Hong Kong and three years have passed and Khan is still a freeman and not a penny has been repatriated.

The following are the references to the media reports downloaded from their respective internet editions:

- (i) <http://economictimes.indiatimes.com/news/politics/nation/hasan-ali-may-face-several-cases/articleshow/7376133.cms>
- (ii) <http://www.deccanchronicle.com//national/indians-have-put-away-around-rs-45-lakh-crores-414>
- (iii) <http://timesofindia.indiatimes.com/india/Hasan-Ali-located-in-Pune-summoned-to-police-HQ/articleshow/1746713.cms>
- (iv) <http://www.livemint.com/2009/01/12010853/Rs40000-crore-incometax-noti.html>
- (v) <http://www.allvoices.com/contributed-news/3196980-hassan-ali-Ali-episode-exposed-upa-character-arun-shourie>
- (vi) Sanjay Kapoor Hard News
<http://www.hardnewsmedia.com/2011/01/3817>
- (vii) http://timesofindia.indiatimes.com/Cities/Mumbai/Hassan_Ali_trail_Worli_police_hunt_for_wife_bro-in-law/articleshow/3372431.cms
- (viii) <http://www.ndtv.com/convergence/ndtv/story.aspx?id=NEWEN20080040040&ch=2/1/2008%2011:47:00%20AM>
- (ix) <http://www.hindustantimes.com/StoryPage/Print/273272.aspx>
- (x) <http://www.rediff.com/news/2007/mar/13ali.htm>
- (xi) <http://economictimes.indiatimes.com/LATEST-NEWS/Pune-tycoon-may-face-Rs-1-L-cr-fine-for-acquiring-Rs-36000-cr/articleshow/3917046.cms>

(xii) <http://www.indiatoday.com/itoday/20070326/nation.html>

(xiii) <http://www.indianexpress.com/news/mystery-millionaire/414865/0>

(xiv) <http://www.livemint.com/2010/07/12230923/Hasan-Ali-investigation-uncove.html?h=B>

The investigative information contained in the above media reports, which alluded to the information they had secured mainly from the investigating agencies, is summarized here:

a) Income Tax and Enforcement raid on Ali in 2007

It all started with raids by Income Tax Department and Enforcement Directorate on Ali on January 2 and 7 in the year 2007. He was under scrutiny for his involvement in Havala from 2003 and that matured into action against him in 2007. The raid yielded shocking revelations about three secret Swiss bank accounts in the name of Ali with deposits aggregating to over \$8 billions. It was also found that Kasinath Tapuriah, a businessman from Kolkata and his wife Chandrika Tapuriah were also found to be fronting for Ali. It was also found that one Phillip Anandaraj, alleged to be a hotelier in Switzerland, was also an accomplice, and he was found to be with Ali in Mumbai residence when he was raided by the IT/ED in January. Documents seized also brought out the fact that Ali was associated in huge financial deals with the international arms smuggler Adnan Khassogi, since about 1982. It is believed that he was highly politically connected and he was most knowledgeable about the foreign transactions of Ali. The IT/ED believed that Ali could never have made that kind of money, as

he had all along been a failed businessman with a continuous criminal record. It was believed that he was fronting for some politicians.

b) Ali probe stymied deliberately from the word go

The ED took the first step, but almost after two years, in December 2008. This is a shocking delay as despite the recovery of the documents in Ali's possession indicating the existence of huge, undisclosed deposits in Swiss bank accounts and investment plans by Ali with Khassogi, which should have merited instant action, the ED took almost two years to make its first move, that is, to issue a show cause notice. In any case of this magnitude, Ali would have been arrested forthwith and subjected to custodial interrogation, which would have yielded supporting and tracing evidence immediately. The documents seized indicated that Ali had liquid fund \$6 billion, which could transfer immediately, and another \$2 billion, which could be free by January 15, 2007, that is about 13 days from the date of the first raid and 8 days from the date of the second. The ED report on the Ali funds cited a letter from M. Rohner, the wealth management executive at UBS in 2006, which stated that Ali "can withdraw \$6 billion and was free to invest this amount as and when he chooses to do so. and that the balance amount of \$2.04 billion would be bound with the UBS until 15.1.2007 and after which Ali was free to invest the same as and when he chooses to do so". That means on January 7, 2007 the Government of India knew that \$6 billion could disappear forthwith and \$2 billion in 10 days from date of the raid. This should have called for immediate

registration of an FIR under Unlawful Activities Prevention (Amendment) Act 2004, which would have enabled the immediate freezing of Ali's assets as terror related funds. This was precisely what the VP Singh government acted under the Prevention of Corruption Act when it directed the CBI to register an FIR in the Bofors case in January 1988 and immediately sent its request for freezing of the bank balances of Hindujas and others in Switzerland. The Swiss government immediately obliged. That was an action under the anti-bribery law; the UPA government could have acted under the anti-terrorism law. In fact from the beginning there was an apprehension of terror angle to the Ali probe. This was kept concealed and just now the Solicitor General of India has written to the government to examine the Ali case from the national security angle. Despite all the possibility to act immediately and arrest the illegal funds, the way the ED acted in the Ali case and the IT department never acted showed that the case was being monitored from above to ensure that action.

c) From \$1.5 million in 1982 to \$8 billion in 2006

By its 18-page show-cause notice of the Enforcement Directorate [ED] dated 22.12.2008, the ED had demanded that Ali immediately repatriate the amount, with updated interest, through banking channels to India, the staggering amount of \$8.04 billion stashed away by him and his associates. The notice charges Ali with acquiring and holding \$8 billion in a single account in Zurich in Switzerland. The ED gave Ali one month's

time to reply to the show-cause notice and also explain how his funds grew from an initial deposit of \$1.5 million in 1982 to a low of just \$560 in 1997 to \$ 969 million in 1997, to \$8 billion by 2006. Along with his front man Kasinath Tapuriah, Ali opened two fictitious companies, Autumn holdings and Paysons, in Virgin Islands and laundered money to the tune of \$280 millions.

d) The Adnan Khassogi connection from 1982:

A more disturbing aspect of the Ali case is his deep involvement with Adnan Khassogi, the infamous international arms dealer whose name figured in the assassination case of Rajiv Gandhi in 1991 as an arms supplier to the LTTE which masterminded the killing of Rajiv Gandhi. The ED officials have evidence that Ali had first opened his account with UBS Singapore through Retro Hartmann of UBS Singapore. This recommendation was organized through Adnan Khassogi. It means that from 1982 at least Ali was associated with Khassogi. Thereafter Dr. Peter Willey, portfolio manager of Khassogi virtually took over as the fund manager of Ali. The link to Khassogi adds to new dimension to Ali.

e) Ali receives \$300 millions from Khassogi as "Funds from Weapons Sale"

It was in his account with UBS in Zurich that Ali received \$ 300 millions from Khassogi, who transferred it from his account in Chase Manhattan Bank New York. It is not clear to the ED when these funds were transferred. These Funds, which were designated as "Funds from weapons sale", were frozen by the Swiss authorities, and stood frozen. Ali and his close associate Kasinath Tapuriah

then adopted different techniques to unfreeze the account and make it operational. The ED report quotes the notation "funds from weapon sale" made by UBS AG, a top-tier investment banking and securities firm, following the transfer to Ali from Khassogi. ED has traced Ali's alleged transaction with Adnan Khassogi through a notarized statement of Ali signed on June 29, 2003 in London. This document contains a letter written by Ali to Prabhu Gupta, director, Organizational Development, Woflsberg Executive Development Centre, Switzerland (a subsidiary of UBS) explaining why one of his Swiss accounts had been tagged with the remark "Funds from weapons sale" and had been made inoperable.

f) UBS refuses to comment on the notation of "funds from weapons sale"

What is the response of UBS? "I would prefer not to talk about this" said UBS India managing director and Chairperson Manisha Girotra, referring all questions to bank's spokespersons. "As truly global entity, our policy on such issues is to comply with the laws and regulations in each host country, while at the same time, complying with the banking laws in Switzerland", said that UBS spokesperson in an email. The spokesperson refused to comment specifically on the arms sale notation. All the money transfers were found recorded in the laptop seized from Ali's residence in Pune and while investigators believe this is laundered money, there was no direct evidence. They felt that they would also need corroboratory evidence to establish that these transfers have anything to do with terror networks. That the Swiss government acted suo moto and froze the Ali account with \$300 millions as from arms sale indicates that even in Switzerland he was a suspect. Had the Government of India sent in its request to the Swiss government for freeze order immediately on the discovery

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Government of India
Cabinet Secretariat

New Delhi, the March 29, 2010

ORDER

Sub: The Salary, Allowances and other Terms and Conditions of the Chairperson and Members of National Advisory Council Order, 2010


The Central Government in continuation of the Cabinet Secretariat Order dated 3rd June, 2004 read with order of the Cabinet Secretariat dated 31st May, 2004 constituting the National Advisory Council, determines the salary, allowances and other terms and conditions of the Chairperson and Members of the National Advisory Council as follows, namely:

Chairperson

1. **Term of office:** The term of appointment of the Chairperson of the National Advisory Council shall be with effect from the date of his or her assuming charge of the office of such Chairperson and shall be co-terminus with the term of the National Advisory Council or until further orders whichever is earlier.
2. **Salary and Allowances:** The Chairperson of the National Advisory Council shall be entitled to the same salary, pay, allowances and other facilities to which a Member of the Union Council of Ministers is entitled under the Salaries and Allowances of Ministers Act, 1952.

Members

3. **Term of office :** The term of appointment of the Members shall be for a period of one year with effect from the date of their appointment which may be extended.
4. **Salary and Allowances :** Members shall draw such salary and allowances as the Central Government may by order determine from time to time.
5. **Special Provisions for a Member of Parliament appointed as Member of the National Advisory Council :** Where a Member of Parliament is appointed as a Member of the National Advisory Council then he or she, as the case may be, shall not be entitled to draw any remuneration, allowances or perquisites as such Member from the National Advisory Council other than the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959.


(Dr. Mrutyunjay Sarangi)

Additional Secretary to the Government of India

Smt. Sonia Gandhi,
Chairperson,
National Advisory Council.

of the huge undisclosed riches of Ali in secret accounts, there was every possibility that the Swiss government would have obliged. The evidence that the Swiss government had frozen an Ali account for suspected arms dealing emerged in the course of the raid on Ali; that means that the ED and the IT department had had this evidence in their possession to act before Ali and his associates, probably the true owners of the money, made the money disappear from his accounts.

g) Tapuriah had confessed to involvement of Congress leaders

The examination of Kasinath Tapuriah, an Ali front, had yielded valuable information about the involvement of Congress party leaders. Tapuriah had said that two politicians, one of them a senior Congressman, had referred Ali to him during his days of financial difficulties. The names of the two congress leaders named by Tapuriah were living at that time, but not now. So the ED could have examined their relation with Ali to get more involvement about Ali's relation with political leaders. The statements of Tapuriah and Philip Anandraj proved to be very damaging since they spilled the beans about several of Ali's connections and foreign transactions. This information was available to the Government almost immediately after the raid. For instance, the very next day after the raid on January 7, 2007, Tapuriah had confirmed the existence of documents proving the \$8 billion illegal deposits, and also revealed Ali's links with others in the money laundering scandal. The Ali-Tapuriah duo ran the havala business as partners and money was routed through Tapuriah to the beneficiaries. They also invested the illegal monies in Indian stock and commodity markets through participatory notes mechanism.

*Andhra
connection
via Vijay Reddy
Reddy as
for CM*

h) Funds linked to terror, organized crime, gun-running and bribes; why anti-terror law was not invoked?

The ED show cause notice also stated: "It is suspected that the accounts with such huge deposits of money originating from various international destinations are proceeds of heinous crimes such as terrorism, arms trade, gun-running, corruption and organized forgery, fraud and others". These are grounds fit for action under the anti terror law of India in force then, the Unlawful Activities Prevention (Amendment) Act 2004 [which had replaced the Prevention Of Terrorism Act]. Under that law, the Ali funds could have been frozen as "proceeds of terrorism" and confiscated under section 24 of the law and pending the due legal process, by registering an FIR under the law, the Swiss government could have been requested to freeze the Ali/Tapuriah/Chandrika accounts. Action could also have been taken under the Unlawful Activities Prevention (Amendment) Act in the matter and all the suspects -- Ali, Tapuriah, and Philip Anandaraj -- and they could have been examined in custody under the stricter anti-terror law than under the benevolent Foreign Exchange Management Act or under the Income Tax Act which are intended for white collar crimes, and not hard crimes like what Ali was believed from day one to have engaged in.

i) Investigate Ali from National Security angle, tells Additional Solicitor General to Finance Minister

This issue assumes added significance after the reported letter written by the Solicitor General of India with reference to the Writ Petition filed by Shri Ram Jethmalani and other public spirited persons in 2009 in regard to the monies stashed away by Indians abroad. "Hasan Ali, the absconding Pune-based

businessman, could be charged under various national security laws, a top official involved in investigations told ET on the condition of anonymity. Solicitor-General Gopal Subramanian, in a confidential letter to Finance Minister Pranab Mukherjee, has emphasized that the matter of Hasan Ali be examined from the point of view of national security. Subramanian gave this opinion with regard to a writ petition filed in court in 2009. Investigators had seized notarized affidavit signed by Hasan Ali, which contain references to financial transactions related to overseas accounts.”

j) The way Ali case was handled showed that ruling party bigwigs were involved with him

When such a huge and unprecedented recovery of documents showing illegal funds abroad had come to the notice of the authorities the action there should have been a lightening action against Ali and his associates. But since Tapuria had the spilled the names of Congress leaders the very next day after the raid on January 7, 2007, the IT probe never took off and the Enforcement probe, which led the issue of final show cause notice in December 2008 constituted action after the horses had bolted. Ali was arrested not for money laundering but for securing three passports from the government of India. He had secured his second passport from Patna in 1997 and the third from Mumbai in 2008. In fact, it is evident that the idea was that the huge funds should disappear and they did. Reports about way the government moved showed the deliberate laxity in the pursuit.

- Ali was arrested in fake passport case and was granted bail by a Mumbai Court on 2.1.2007;
- It was this case that led to the raid on Ali;

- Ali checks into hospital for heart and lung complaints immediately after the raid and remains in hospital for three weeks;
- Ali is not traceable for the Pune or Mumbai police;
- Suddenly Inspector [crime] Bhanu Pratap Barge in Pune says that following orders from Additional City Police Commissioner Shri Rajinder Singh he had served notice u/s161 of the CrPC [as witness to crime] at a "discreet location" in Pune;
- Nothing happens almost for a year;
- The ED "issued" a show cause notice in December 2007;
- Then it was "preparing to issue" another notice in January 2008;
- The Government tells the Bombay High Court in February 2008 in response to Ali's plea for the return of the seized passports that Ali was absconding and if he left the country the probe would collapse;
- Information comes to light in February 2008 that he and his wife had applied for Swiss citizenship;
- Maharashtra police raids Ali's residence and seizes his passports;
- Ali flees with his wife and son immediately and absconds;
- He stays in Yusuf Lakdawalla's house in Madh-Island;
- Then he stays in a Bungalow in Lonavala from July to October 2008;
- Ali tells the Mumbai police that while he was absconding he met Ahmed Patel the Political Advisor to the Congress President, the Chief Minister of Maharashtra, the Commissioner of Police and the Home Minister of Maharashtra in Centaur Hotel on 8.11.2008 [the transcript of the video recording of this meeting is separately dealt with]
- Ali surrenders thereafter, and the Maharashtra police arrests him

- Then the ED issues a show cause notice in December 2008;
- Ali is granted bail by the lower court
- The government appeals to the High Court for the cancellation of the bail
- The Bombay High Court slams the Maharashtra police in February 2010 for not being interested in getting Ali's bail cancelled;
- The IT Department sends Letter Rogatory to the Swiss authorities;
- The Swiss government declares that the documents attached to the Letter Rogatory request were forged;
- The IT department then sends in request asking for information from Swiss authorities on the ground that Ali had not filed IT returns, and not on the ground of tax evasion;
- In December 2010 The Swiss authorities refuse assistance saying that non-filing of return is not an offence under the Swiss law and therefore no assistance can be provided in the Ali case.

The above summary of the way the ruling establishment has treated Ali leads to the inevitable inference that there is bound to be the involvement some one so important and so powerful that the probe had to be scuttled despite the fact that it involves national security issues as suggested by the Solicitor General of India

k) Is Ali fronting for a leading politician?

On the very next day after the raid on January 7, 2007, Ali's collaborator Kasinath Tapuriah told the ED/IT department that two congress leaders had introduced him to Ali. The government did not and would not pursue this significant lead information. Ali's Swiss associate Philips Anandaraj also had

told the police about the involvement of politicians in the billions held by Ali in secret. The Economic Times reported: "Investigators are also trying to ascertain the real beneficiary behind Hasan Ali's spectacular wealth. **Investigators say funds might have been amassed from defense deals and Hasan Ali could be a front for a politician.** The main reason for suspicion is Hasan Ali amassed 36,000 crore in overseas bank accounts in less than 15 years with no known sources of income". But the most important circumstantial evidence is provided by the manner in which such sensational case of money laundering which involved sums, which rank as big international fraud has been handled by the authorities. Unless some extremely powerful person or persons were involved this kind of laxity, which is deliberate and contrived, is unthinkable and impossible. The very fact that neither Ali or his associates have not been put in custody and interrogated immediately or ever thereafter when persons with one millionth of the volume of the sums involved in Ali's case speaks volumes about the powerful forces which must have worked to stymie the case. What kind of forces would have worked to undermine the investigation and render it almost meaningless may be judged from the extremely significant information given here below.

1) Ali case a mega cover-up

The Hasan Ali case has created serious apprehensions in the mind of the people about why Hasan Ali is being protected by the government. Writing on what he calls as "another mega scam cover-up" and asking "Protecting Hasan Ali and Who else?" Shri Rajinder Puri wrote in his column on March 10, 2010 as under:

Quote

On October 20, 2009 this scribe explained how the government was not pursuing the Hassan Ali money laundering mega scam. The cover-up continues. LK Advani is elated because the President's address in parliament referred to the issue of Indian black money stashed in foreign banks. Advani has demanded a White Paper on the subject and has expressed satisfaction that the government has taken note of his concerns. However, his joy may be premature. A distinguished Chennai based chartered accountant, Mr. M.R. Venkatesh, who closely studied the current budget, has raised some pertinent questions that need clarification.

The budget gave figures of the tax revenues raised but not realized by the government of India. This provides details of the unrealized dues on various taxes, such as Income Tax, Excise, Customs and Service tax. These are further categorized under amounts under disputes where the assessee has filed an appeal, and those not under any dispute. According to Budget 2010-11, the Tax revenues raised but not realized aggregates to Rs 117,065 crores.

Now recall the strange case of Hassan Ali. In January 2007, the income-tax department first raided Hassan Ali's residences across the country and seized documents that revealed he had a sum of USD 8 billion deposited in the UBS AG bank, Zurich. The department also found that Ali had not filed income-tax returns since 1999. Later, the Enforcement Directorate (ED) got into the act and started investigation, as it was also a case of suspected money laundering.

Subsequently, income-tax department had issued notices to Hassan Ali, along with others, alleging money laundering to the tune of several billion dollars for suspected tax evasion. According to press reports a show-cause notice was issued by the IT department demanding Rs 40,000 crores in taxes alone against Hassan Ali for not disclosing several foreign bank accounts, including the above-mentioned USD 8 billion stashed in UBS AG bank, Zurich.

Hassan Ali is out on bail on a fake passport case. On February 10, 2010 media reported that the Bombay High Court had dismissed the appeal of the state government to cancel this bail. The court observed that the state itself was not interested in cancelling the bail granted to Hassan Ali. Justice D G Karnik said, "The state government is not interested in serving notice (to the accused) even after six months of filing an appeal." Justice Karnik added that if the

government was not keen on pursuing its own appeal, the court had no reason to waste time on it.

On August 4 2009 while disclosing the list of tax defaulters in the Rajya Sabha the government stated that Hassan Ali topped the list of tax defaulters with an outstanding arrear of more than Rs 50,000 crores. The tax due after adding interest for belated payment of tax according to rough estimates presently exceeds Rs 70,000 crores. This amount totaled with his money-laundering associates could add up to staggering Rs 100,000 crores. Yet, the entire tax dues of the government of India stated in this Budget for all taxes (disputed and non-disputed) as per the statement of tax revenues raised but not realized aggregates to a mere Rs 117,065 crores. And the income tax due from individuals (both disputed and undisputed) alone is even much lower at Rs 50,000 crores. Where did the Rs 100,000 crores due from Hassan Ali and his associates disappear?

Could Hassan Ali and his associates have paid their taxes aggregating to approximately Rs 100,000 crores by February 26th 2010 when the Budget was delivered? The Week in its issue dated 14th March 2010 interviewed Finance Minister Pranab Mukherjee precisely on this subject. The FM asserted that the government recovered the tax dues from Hassan Ali. If true, the revised estimates for 2009-10 do not reflect this. Rs 100,000 crores are too large a sum to be lost even in the government of India's budget. Either the FM was wrong or he was misquoted by The Week.

Things become even murkier. Presently under the existing provisions of the Income Tax Act no application can be made to the Settlement Commission when a search has been initiated under the Act. Budget 2010 has proposed to waive this. Experts think this amendment could help Hassan Ali to approach the Settlement Commission and settle his tax disputes with the IT department without impediment. This escape route for Hassan Ali has profound implications. To appreciate it, note Para 124 of the Budget where the FM stated: "Last year, amendments to the statute enabled Government to enter into tax treaties with specified territories besides sovereign states. We have commenced bi-lateral discussions to enhance the exchange of bank related and other information to effectively track tax evasion and identify undisclosed assets of resident Indians lying abroad."

The gathering global momentum against illegal money in tax havens compels India to disclose the names of tax defaulters who have illegal accounts in such havens. But if, as the FM told The Week, the government had collected taxes from Hassan Ali, the government need not pursue this matter further in other countries. In case he has not yet paid the taxes the escape route provided by the amendment of the Income-Tax act pertaining to the settlement commission will enable government to avoid further pursuit of the case abroad. Either way, the foreign probe of Hassan Ali could be aborted.

In the Hassan Ali case, money was transferred by the Hawala route. It is likely that Hassan Ali, like Abdul Karim Telgi of the stamp paper scam, is just a front man. A mere stud farm owner could not originate such huge funds. The manner in which the government is going soft on him suggests that he could be the conduit for political bigwigs.

So, the questions that need to be addressed are:

- 1. Did the FM mislead the House by giving a false figure of the Tax revenues raised but not realized of Rs 117,065 crores?*
- 2. Did the FM actually tell The Week that Hassan Ali had paid his taxes or was he misquoted?*
- 3. What has impelled the FM to amend the Income Tax Act relating to the Settlement Commission? Pranab Mukherjee needs to answer these questions to dispel doubts that a brazen cover-up of another mega scam has not occurred.*

[<http://www.boloji.com/myword/mw176.html>]

Unquote

What Shri Rajinder Puri has written is precisely the question and the apprehension in the mind of the people of India. Who the government is protecting when it is protecting Hasan Ali? Why the government is disinclined to pursue its appeal against the bail granted to Hasan Ali? These questions are

relevant also in the context of whether the present is keen to recover the monies stashed by Indians abroad.

m) ED proposed arrest in December 2008; no arrest till now

As early as late December 2008, reports appeared in newspapers that the Enforcement Directorate was about to file prosecution against Hasan Ali. The report that appeared in the Indian Express on December 21, 2008 under the heading "Hasan Ali case: ED to file charge sheet within a month" read as under:

Quote:

The Enforcement Directorate (ED), which is probing the economic offences case against Pune-based businessman Hasan Ali, will be filing a charge sheet within a month. ED officials are on the second day of interrogating Ali at Worli police station following his surrender and subsequent arrest last week.

Ali faces up to four charge sheets from the ED, income-tax (I-T) department and the Worli police. A senior ED officer said if Ali cooperates with the agency, it will be filing a charge sheet for alleged offences under the Foreign Exchange Management Act (FEMA) in a month. He said the other three charge sheets will include money laundering case, an I-T department case and a multiple passports case.

The ED is currently probing Ali under the Prevention of Money Laundering Act (PMLA) and FEMA. Ali is wanted by the ED for allegedly holding unaccounted money of up to \$8 billion in Swiss bank accounts and some undisclosed accounts in the UAE.

The ED, however, feels the case of money laundering will take more time to investigate and it may take up to six months to file the charge sheet as more people are involved in the case. "We are not concentrating on where he was during the past one year. We are just confronting him with various

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Government of India
Cabinet Secretariat

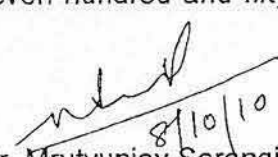
New Delhi, the October 8, 2010

ORDER

Subject: The Salary, Allowances and other Terms and Conditions of the Chairperson and Members of National Advisory Council Order, 2010.

The Cabinet Secretariat Order of even number dated 29.03.2010 prescribing the salary, allowances and other terms and conditions of the Chairperson and Members of the National Advisory Council (NAC) *inter-alia* stated that the Members shall draw such salary and allowances as the Central Government may by order determine from time to time. It has, accordingly, been decided that the allowances payable to the non-official Members of the NAC shall be regulated as below:

- (i) cash allowance of ₹1000 per day (Rupees one thousand only) for the day(s) of meeting of the NAC;
- (ii) to-and-fro air fare by economy class to the outstation Member in connection with the meetings of the NAC on reimbursement basis;
- (iii) rent of a single room in a State Guest House/ITDC Hotels/India International Centre/ India Habitat Centre, New Delhi to the outstation Members; and
- (iv) conveyance allowance of ₹750 per day (Rupees Seven hundred and fifty only) for attending the meeting of the NAC.


(Dr. Mrutyunjay Sarangi)

Additional Secretary to the Government of India
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Smt. Rita Sharma,
Secretary,
National Advisory Council.

documents regarding his accounts in Switzerland and Dubai," the ED official said. "We need to interrogate him for a month and we will be seeking for the same from the court during the next hearing," the official added.

Meanwhile, the ED is still holding on to the passport of Ali's alleged co-suspect Philip Anandraj. In October, it had told the Bombay High Court that the investigation concerning Anandraj might conclude in two months. The court had directed the ED to dispose of an application filed by Anandraj seeking the release of his passport.

The ED is, however, reluctant to give it on grounds that Anandraj is not fully cooperating with the investigation and now with Ali's arrest, the statements given by the two appear contradictory. "We will submit all this before the courts. We will also resort to stringent measures if required," the ED official said.

Unquote

[<http://www.expressindia.com/latest-news/hasan-ali-case-ed-to-file-chargesheet-in-a-month/401055/>]

Having proposed to prosecute Hasan Ali as early as in December 2008, it not only did not file any prosecution, the government would not even prosecute its appeal in February 2010 against the bail granted to Hasan Ali.

n) Collusive request to the Swiss authorities for assistance

And the latest position is that the Swiss banks have, refused to give Hasan Ali case details to the Indian government on the ground that the offence of tax evasion allegedly committed in India is no offence under the laws of Switzerland. This shows that by intentionally and deliberately treating the Hasan Ali case not as a case of money laundering by crimes, and not even as a case of tax evasion, but as just as a case of non filing of tax returns, the

government of India has allowed billions of dollars of Indian monies stashed away in Switzerland by Hasan Ali and his co-conspirators to escape Indian laws. The extracts of the report are as under:

Quote

Swiss banks will hold back information on cash allegedly stashed there by Pune-based stud farm owner Hasan Ali on technical grounds.

The Swiss authorities' refusal to part with the information is on the premise that the offence was allegedly committed in India – in this case – not filing returns. This is not an offence under the Swiss laws.

The Swiss laws governing its banking sector stipulate that banks are bound to furnish details of a bank account to a foreign government only if the offence committed by the account holder is an offence under the Swiss laws too. In this case, not filing returns is an offence under the Indian laws, is not an offence under Swiss laws. However, tax evasion is an offence in both the countries.

This is the latest example of how banks in low tax regime countries use feeble technical reasons to blunt a foreign government's investigation into the accounts of unscrupulous elements, who have stashed away huge amounts in violation of the laws, safeguarding their respective economies.

Therefore, the income tax department in India has been told that that it would not get any information on the \$8billion allegedly stashed away by Hasan Ali. His funds are being investigated by the income tax department as well as the Enforcement Directorate (ED) which deals with the violations of the rules governing the use of foreign currency.

The department sought the information through a letter rogatory to Switzerland. The letter rogatory, essentially a request for legal assistance, was sent to the Swiss authorities to furnish the details of Mr. Ali's accounts.

A senior income-tax official expression surprise over choosing "not filing of returns" as the reason for initiating a letter rogatory to Swiss

authorities as it is well known that "not filing of return" is not an offence under the Swiss laws and therefore they are not bound to comply with the request" [emphasis added]
Unquote

[Hasan Ali squeezes through I-T loophole again, holds Rs 50,000 cr tax dues by Economic Times dated 22-01-11]

[<http://economictimes.indiatimes.com/personal-finance/tax-savers/tax-news/hasan-ali-squeezes-through-i-t-loophole-again-holds-rs-50000-cr-tax-dues/articleshow/7337729.cms>]

The intention behind sending the letter rogatory on the ground that Hasan Ali "has not filed tax returns" is collusive and fraudulent as the authorities sending such a request, as the Economic Times report says, ought to have known that that was not an offence under the Swiss laws and therefore the Swiss government would not provide the details about the \$8 billion stashed away abroad by Hasan Ali. It does not need a seer to say that the direct effect non-filing of the return or the purpose of the non-filing of the return by Hasan Ali was to evade tax. Therefore the offence really is that it is a tax evasion. It is like charging a person who has used an unlicensed pistol to commit murder with not applying for license and not for murder! So the intention is very clear, namely that Hasan Ali has to be protected, because unless he is protected, several others would be left unprotected. Moreover, the Hasan Ali case is not just a case of tax evasion. There is no way Hasan Ali could have earned that kind of money -- \$8.6 billions -- through stud-farm which is his only known source of income. The money must be linked to some crime or the other. It could have been easily brought within the

parameters of money laundering and crime. As Shri Rajinder Puri has written, it is probably linked to Hawla that is traceable to the Telgi stamp paper scam in which many political bigwigs are suspected to be involved.

o) The Hasan Ali's case – the smoking gun

It appears that the Congress Party and the UPA government at the highest levels are secretly involved with Hasan Ali in whose Swiss account the \$8 billion loot was found by the Income Tax Department authorities. An irrefutable proof of a secret meeting of the Maharashtra Government and the Political Adviser to the President of the Congress Party Smt Sonia Gandhi with Hasan Ali has been revealed by one of the members of the Task Force, Shri Mahesh Jethmalani, on 25 January 2011 in the debate in the Times Now TV Channel moderated by Shri Arnab Goswami on Black Monies stashed overseas. In his sensational revelation Shri Mahesh Jethmalani said that that the Crime Branch of Mumbai Police in Mumbai has a video recording of the secret meeting between Hasan Ali, who was absconding in the Enforcement Case of \$8 billion against him, the then Chief Minister of Maharashtra Vilasrao Deshmukh and the Political Advisor to the Congress Party President Shri Ahmed Patel, and Shri Ghafoor Ahmed Khan, who was later appointed as the Police Commissioner of Mumbai at Hotel Centaur [now known as Tulip] in Mumbai on 8.11.2008 Shri Mahesh Jethmalani has made available a copy of the CD of this audio-video with the transcript of the conversation among the four persons [in which the decision to appoint Shri Gaffoor as the Commissioner of Mumbai Police] to the Task Force. The transcript of the answers given by Hasan Ali to the Police, taken from the

Video available with Shri Mahesh Jethmalani, one of the members of the Task Force is as under:

Quote

[Part 1]

Hasan Ali: During the search conducted by the police at my Pune Residence in February-March 2008 they seized two official Passports. I fled with my wife and son from there. My mother use to stay there. From there I went to Madh-Island where my friend Yusuf Lakdawala has a bungalow. I resided there from March to June. Thereafter with the reference of my driver I stayed at a bungalow in Lonavala from July to October by paying Rs.5000/- everyday.

Police: Did you stay at Madh-Island or Lonavala

Hasan Ali : Lonavala

Police: He has a home in Bandra also, no?

Hasan Ali : He has a flat in Bandra.....In Madh Island he has a Beach House ... near the Sea.

Police: Did you paid any rent for your stay.....

Hasan Ali : No

Police: As a guest.... as a friend.... Saheb came alone or with his family?

Hasan Ali : With Family

Deleted: 1

Police : How many times did he come?

Hasan ali : I don't know.... Sir had a very big project with Irani

Police : Yusuf Lakdawala's ?

Hasan Ali : Yusuf Lakdawala's friend Very big project..... of Water purifier... Honey Irani very big plant.

Police : Is it just like Aqua Guard

Hasan Ali : No, Its a project for filtering sea water

Police : O.K. Actually whats the business of ... Yusuf...

Hasan Ali : Dubbing Theatre

Police : Dubbing Theatre..... ok is he the same connected with film line.... with Bollywood

Police: Such a big personality goes with such a big personality comes in contact with Sonia Gandhi, and you said that new thing came for me.... Where the CM used to come.

Hasan Ali : Ahmed Patel

Police: O.K. Ahmed Patel Her Political Advisor..... C.M. too came there...

Hasan Ali : All these people were there for 4 hrs... at the Centaur Hotel which they opened for.....

Police: Oh my god.... You must have talked with C.P. too....

Hasan Ali : He was in front of me..... I was made to talk to him

Police : By Who Lakdawala?

Hasan Ali : Pune Commissioner

Police: Who ?

Hasan Ali : Two months back..... Three months back.....

Police: Umranikar ?

Hasan Ali : Not Umranikar

Police: Who Satyapalsingh ?

Hasan Ali : Satyapal Singh..... and Home Minister too

Police: which one Delhi Home Minister..... or from here

Hasan ali : Yes

Police: Then R.R. Patil was Home Minister

Hasan Ali : (check) I don't know..... My son told me it will be ours.....

Police: Must have happenedAhmed Patel must have phoned.....

But Ahmed Patel is from Congress C.P. Shivenandan from Thane had done a lot of fielding ... even then Ghafoor Saheb Don't know who is with you.

[Part 2]

Police : What you told yesterday..... Bandra..... How many days you stayed there.....

Hasan Ali: 20 to 15 days

Police : Adnan Kashogi who deposited 3 Billion dollars in your account in exchange what did you pay to him.... Drugs or Arms

Hasan Ali: (Check)

Police : Arrey the Account has been seized.... There is still balance in it.

Hasan Ali: I will give in writing Sir... There was no give and take..

Police : How did Adnan Kashogi deposit in it....

Hasan Ali: No Account.... No Money....

(The Phone Rings)

Police : I am at Ward No.7 I am coming down...

Second Police: You know Adnan Kashogi... Sir says Arms dealer

Hasan Ali: Neither I know him ... nor I met him

Police : And you met Russian Mafia..... Russian Inginaldo.... You lost one passport.... Evidence has come against you and hence we are asking- we are counterchecking..... what is your dealing with the Russian Mafia.... Your passport is lost

Hasan Ali: He is my friend..... had a conversation with them.... I have no involvement with them... My passport was stolen.... These people or who took I don't know....

Police : You had lodged a false complaint of passport being stolen the S.P. Saheb

(Checks)....Yusuf Saheb managed him

Police : How did he do that.... Give me some idea....

Hasan Ali : Saheb told me.....(Check Sonia.....) He was at Saheb's party so.....

Police : Who told whom?

Hasan Ali : C.P Yusuf said He is my friend... Good Officer..

Police : You told me it was Pune C.P.... Don't be afraid tell me who told you....

Hasan Ali : (Check) He is my man... don't worry.

Police : Yusuf Bhai himself said ?

Hasan Ali : Yes

Unquote:

In fact, this information and the video recording was first placed in the public domain by Shri Ram Jethmalani, the well-known senior lawyer [who has filed the Writ in the Supreme Court on the issue of black money abroad] on 15.4.2010 at a press conference addressed by him in Mumbai. The Hindustan Times reported on this press conference thus:

Jethmalani also spoke on the controversial CD footage of Ali telling his interrogator that he was present in a meeting in 2008 where politicians including then chief minister Vilasrao Deshmukh, home minister R.R. Patil and senior Congress leader Ahmed Patel were deciding on Mumbai's police commissioner.

Quote

"I do not care who participated, but what worries me is the presence of Patel," said Jethmalani. "What legitimate reason can be for his [Patel] mixing with Ali?"

Besides reporting the press conference, Nagaland Post also reported on the responses from those against whom the allegations were made thus:

The senior lawyer also alleged that Ali was present at a meeting when the appointment of Hasan Gafoor as Mumbai police commissioner was being discussed.

"What is more alarming and shocking is that Ahmed Patel, the political secretary to Sonia Gandhi, was also present at the meeting - and this thing, Hassan Ali has confessed himself," he said.

"What was he (Patel) doing there, what legitimate reason can there be for his mixing with Hassan Ali?" Jethmalani asked.

Ali has been in the news after Bharatiya Janata Party (BJP) presented a CD, containing content allegedly linking him with several top leaders like union Heavy Industries Minister Vilasrao Deshmukh, Maharashtra Deputy

No. 631/2/1 /2004-Cab
Government of India
Cabinet Secretariat

New Delhi, the May 31, 2004

ORDER

Sub: Constitution of a National Advisory Council (NAC) to monitor the implementation of the National Common Minimum Programme (NCMP) of the Government.

The Government has decided to constitute a National Advisory Council (NAC) to oversee the implementation of the National Common Minimum Programme of the Government

2. The NAC would be headed by a Chairperson with the rank and status of a Union Cabinet Minister and shall consist of such number of Members, not exceeding 20, as may be nominated by the Prime Minister in consultation with the Chairperson,

3. The functions of the National Advisory Council would be as follows:

a). To monitor the progress of the implementation of the Common Minimum Programme;

b) To provide inputs for the formulation of policy by the Government and to provide support to the Government in its legislative business

4. The Council would be supported by a Secretariat with the necessary complement of officers and staff who shall be responsible to the Chairperson. The Council may engage services of such experts and academics, as required, to assist in its work. The Council may invite such person or persons, as it may deem fit, to participate in its deliberations.

5. The Council would be provided adequate and appropriate office space by the Central Government. All expenditure incurred in connection with the functioning of the Council would be met by the Central Government and provided through the PMO.

6. The expenditure incurred for the functioning of the Council would be met by the Central Government.

7. The Council would meet at least once every quarter and more frequently, if necessary and would be serviced by the Prime Minister's Office.

K.L. Sharma
Deputy Secretary to Cabinet

Chief Minister Chhagan Bhujbal and Home Minister R.R. Patil, in the state assembly earlier this week.

Following the allegations, Patil promptly ordered a CID inquiry into the origins of the CD and vowed to quit from his post if the charges against him were proved. Deshmukh has dismissed the allegations while Bhujbal is silent over the issue.

<http://www.nagalandpost.com/ShowStory.aspx?npoststoryid=UzEwMjQ2Nzc%3D-8EFSTg4bVUE%3D>

While Ali tells the Police that he met Shri Ahmed Patel in Centaur Hotel, Shri Patel has however denied having been present at any meeting with Ali or ever met him; Vilasrao Deshmukh ordered an inquiry into the affair, but till now nothing contrary has been found out. The Home Minister Maharashtra has denied the meeting. But the video exists and is in the possession of Shri Mahesh Jethmalani one of the members of the Task Force.

Deleted: [http://www.nagalandpost.com/ShowStory.aspx?npoststoryid=UzEwMjQ2Nzc%3D-8EFSTg4bVUE%3D]

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XVIII. Bofors pay off to Quattrocchi and his links with the family of the President of the Congress

Despite all the efforts to bury the Bofors pay off case, it refuses to die. The Income Tax Appellate Tribunal decision on Vin Chaddha's tax issues has brought the issue alive back to the public domain. Shockingly the Tribunal decision came the very day the CBI had moved the CBI court for closing the case against Ottavio Quattrocchi. Some recall of the Quattrocchi part of the Bofors pay off case is necessary to know how its continuation impacts on the attitude of the government of India to the illegal monies of Indians stashed away abroad.

The Italian born Ottavio Quattrocchi's association with the family of the Congress President and the Chairperson of the UPA and NAC is more three decades old. The

closeness of the two families has been testified to by the SPG security official mentioned earlier. No one has disputed that Quattrocchi got the first installment of \$ 7.3 millions out of the total bribe of \$36.5 millions [3% of the contract value of \$1.2 billions] from Bofors in the arms deal that he had procured from the government of India as he had promised to them before 31.3.1986, due to his front company for swinging the gun deal for Bofors. The slush money of \$7.3 millions was traced to Quattrocchi's account by the CBI, which got it frozen some 20 years ago. But when the law was closing in on Quattrocchi in early 1990s, the Congress government [led by the late Shri Narasimha Rao] had stealthily allowed him to escape from India. He turned fugitive; but his slush money had continued to remain frozen. Sten Lindström, the Swedish police official who, as the head of the Swedish National Investigation Bureau [equal to the CBI here] investigated the Bofors case for 18 years, wrote an article in the Asian Age newspaper in the year 2004, saying that Mrs. Sonia Gandhi should be interrogated in the Bofors case, particularly on her family's relations with Quattrocchi, on who introduced him to Bofors and why did Bofors pay him for deal with India. This article had appeared in most media in India. Subsequently, the CBI obviously under pressure from the UPA government headed at the UPA level by Mrs. Sonia Gandhi as the NAC Chairman, quietly allowed Quattrocchi to withdraw the money he had stashed away from India and which the government had got arrested. The then Solicitor General of India was sent to London to facilitate the release of the money. This was all in the media and in the public domain. This instance demonstrably shows that the present government, far from being keen to recover the Indian slush money lodged abroad, is keen to release such monies arrested on due process of law. The UPA II, with a different political combination, was in power then, with Mrs. Sonia Gandhi as chairperson of the National Advisory Council and also of the UPA. It

was also clear from the media reports in the public domain that Mrs. Sonia Gandhi was keen to protect Quattrocchi and she had asked the previous government as early as 1999, to show evidence against Q, when the most clinching evidence of the loot caught in Q's frozen account, had fixed him conclusively. She had asked the government for evidence even after the Swiss court once, Delhi High court twice and this Hon'ble Supreme Court had held him part of the Bofor's fraud. And in the year 2009, even as the country was approaching the elections, the government of UPA of which Smt Sonia Gandhi was the head, withdrew that Red Corner Notice against Quattrocchi so as to finally allow him to escape the Indian law.

It was in these circumstances that the Income Tax tribunal decision came on the very day the CBI was applying to close the criminal case against Quattrocchi. This is how 'The Hindu' newspaper [January 3, 2011] had carried the following report which is self-explanatory

Quote

In a further embarrassment to the Congress, under whose stewardship the United Progressive Alliance government is already neck-deep in tackling the impact of various scams, an Income- Tax Tribunal has provided fresh powder to fire the Bofors guns.

It ruled that Rs. 41.2 crore was paid as kickbacks to the late Win Chadha and Italian businessman Ottavio Quattrocchi in the Swedish howitzer deal and the two are liable to tax in India on such income.

Dismissing an appeal by Win Chadha's son against the I-T Department's tax claim of Rs. 52 crore and Rs. 85 lakh from his father for the assessment years 1987-88 and 1988-89, the Income Tax Appellate Tribunal (ITAT), in a 98-page order dated December 31, 2010, said: "The investigations revealed that an amount of 242.62 million Swedish kroners [Rs.412.5 million] was paid by M/s. AB Bofors, as commission, to Mr. Quattrocchi and Chadha

through M/s. A.E. Services and M/s. Svenska, in contravention of the policy of the government of India not to allow middlemen/agents in the deal."

In its order made available on Monday, the ITAT detailed the denials by Bofors on the existence of middlemen in the Rs. 1,437-crore gun deal contracted in 1986, as also the efforts made to open a series of accounts to transfer money in a bid to cover up the original source of the funds.

Urging serious and concerted steps to recover the tax dues, the two-member ITAT Bench that comprised R.C. Sharma and R.P. Tolani said: "In our view, to enforce the rule of law, these steps are desirable to bring all the relevant income-tax violations to the logical end by the Income-Tax Department. Inaction in this regard may lead to a non-existent undesirable and detrimental notion that India is a soft State and one can meddle with its tax laws with impunity."

The tribunal order comes on the eve of a scheduled hearing by a Delhi court of a plea by the CBI seeking to drop criminal proceedings against Mr. Quattrocchi, the Italian businessman whom the Opposition says is close to the Gandhi family. Mr. Quattrocchi left India in 1993 even as the CBI lodged a case on the alleged kickbacks in the gun deal.

Bofors, the ITAT said, should have reduced the commissions paid from the contract price while pointing out that the government had to pay an excess amount of Rs. 41.2 crore, which was passed on to Chadha and Mr. Quattrocchi in violation of the terms of contract.

The ITAT noted that a commission of Rs. 32.66 crore was transferred to M/s. Svenska Inc., Panama, which was traced to Chadha, and eventually credited in an account of the Geneva-based Swiss Bank Corporation. Likewise, Rs. 8.57 crore was transferred to the AE Services Limited, c/o Mayo Associates SA, Geneva, which was opened only a fortnight earlier on August 20, 1986.

Moreover, despite the Indian government's insistence on not appointing or paying any agent, Bofors entered into a fresh consultancy agreement with the U.K.-based AE Services at the instance of Mr. Quattrocchi. "This amount of SEK (Swedish Kroner) 50,463,966 works out to be exactly 3 per cent of the amount of advance paid by the Government of India to the Bofors and was, thus, perfectly in accordance with the terms set out in the AE Services Limited-Bofors agreement dated November 15, 1985," the order

said. In the event, Chadha, as also the entities through which money was transferred as kickbacks to Mr. Quattrocchi, were liable to pay tax in India, the ITAT held.

[<http://www.thehindu.com/news/national/article1030168.ece>]

Unquote

Not only that, another Report in the recent issue of India Today [17-01-2011] says -- based on the testimonies of an SPG officer and driver to CBI as early as 1997 -- that Q met Sonia 21 times after Rajiv Gandhi's death. So we should be clear about the crime. Actually one of our Government lawyers helped Q to de-freeze his accounts in London recently.

This clearly shows the nexus between the Bofors pay-off and the Chairperson of the UPA. And the Quattrocchi episode is a standing testimony for the UPA government's incapacity to take the agenda of recovering illegal Indian monies stashed abroad.

XIX. The alleged secret Swiss accounts of the family of the UPA chairperson

It is a matter of concern that there have been serious and persistent allegations in the media in and outside India about alleged secret Swiss accounts held by the family of the Chairperson of the UPA, Smt Sonia Gandhi, which have not been even formally denied by any one from the family. Because of that, there is an increasing apprehension in the public mind that it is due to the involvement of leaders close to the UPA and its component ruling parties that the UPA government and therefore India remain the only exception to the global pursuit of illegal monies abroad. The apprehension is that the Indian government is not taking

the aggressive measures in that direction unlike the other countries as explained here in this report. The reports have appeared in the media outside and in India in the last 19 years are catalogued here for ready reference and appreciation:

1. Investigative report in Schweizer Illustrierte [19.11.1991]

Schweizer Illustrierte, which is a popular magazine of Switzerland, did an expose' of the bribes allegedly taken by some 14 leaders of Third World countries, and the name of Late Shri Rajiv Gandhi was found among the 14 leaders who had reportedly stashed away their bribes in secret Swiss bank accounts. The name and the photograph of late Shri Rajiv Gandhi appears along with that of other 13 leaders with a remark that bribes of 2.5 Swiss Francs are kept in secret accounts in Switzerland. The amount of SF 2.5 billions equals \$2.2 billions. This amount was said to have been in existence from prior to June 1988 in the name of Shri Rahul Gandhi who was a minor and became a major then, and was being controlled by Smt Sonia Gandhi. The present value of this amount, which would have appreciated with income earned thereon, is staggering. If the amount had remained invested safe long term US government bonds it would have grown to a huge sum of \$8.41 billion equal to Rs 42345 crores according to www.measuringworth.com, a US website which measures the appreciation in the values of investment over a period of time. This Swiss magazine's report was immediately noticed and brought to the attention of the Parliament by Shri Amal Datta [CPM] Member of Parliament raised the issue in Lok Sabha on 7.12.1991, but the then Speaker Shivraj Patil expunged the reference from the proceedings.

2. Startling revelations in the book "The State within a State: The KGB and its Hold on Russia-Past, Present, and Future", by Dr Yevgenia Albats

[Farrar, Straus and Giroux Paperbacks, 1994; ISBN 0-374-52738-5]

Dr Yevgenia Albats, a Harvard educated journalist and an acclaimed investigator says in the above book that: "A letter signed by Victor Chebrikov, who replaced Andropov, as the KGB head in 1982 noted: "the USSR KGB maintains contact with the son of the Premier Minister, Rajiv Gandhi (of India). R. Gandhi expresses deep gratitude for the benefits accruing to the Prime Minister's family from the commercial dealings of the firm he controls in co-operation with the Soviet Foreign trade organizations. R Gandhi reports confidentially that a substantial portion of the funds obtained through this channel are used to support the party of R Gandhi." [P.223 of the book]. Dr. Albats has also disclosed that, in December 1985, KGB chief Victor Chebrikov had asked for authorization from the Central Committee of the Communist Party of the Soviet Union, "to make payments in US dollars to the family members of Mr. Rajiv Gandhi, namely Sonia Gandhi, Rahul Gandhi and Ms Paola Maino, mother of Sonia Gandhi."

3. Indian media reports on the Schweizer Illustrierte report and Dr Albats book

The Indian media was slow to pick up and follow the above reports obviously because of the said demise of late Shri Rajiv Gandhi under tragic circumstances even though the leaks by the Russian media about the KGB disclosures were carried in the Indian media. And even before Dr Albats' book came out the Russian media had leaked out the details of the alleged pay offs. Based on the leaks, on July 4, 1992, 'The Hindu' newspaper had reported "the Russian Foreign Intelligence Service admits the possibility that the KGB could have been involved in arranging

profitable Soviet contract for the company controlled by Rajiv Gandhi family". Otherwise, the Indian media's interest in it began with the entry of Smt Sonia Gandhi, the present UPA Chairman and the National Advisory Council into active politics by assuming leadership of the Congress party. Thereafter the Indian media began pursuing the exposes of Schweizer Illustrierte and Dr Yuvegins Albats as summarized hereunder:

- (a) On 31.12.2008, AG Noorani, a well-known writer, wrote a column in the Statesman Newspaper on the disclosures in both Schweizer Illustrierte and the book on KGB by Dr Yuvegina Albats.
- (b) In the year 2002, Dr Subramanian Swamy, the president of the Janata Party had put out the photocopies of the pages of Schweizer Illustrierte and Dr Albats in the Website of the Janata. He also put on the website, the mail letter of the Swiss magazine dated 23.2.2002 in which the confirming that in its article of November 1991, it had named Rajiv Gandhi with a total of Swiss Franc 2.5 billion [\$2.2 billion] in secret account; it had also offered to supply an original copy of the magazine to Dr Swamy. The mail letter of Schweizer Illustrierte is attached as Annex IV here.

[See: <http://www.janataparty.org/annexures/ann10p43.html>]

- (c) On 15.8.2006, Rajinder Puri, a reputed journalist, also wrote on the KGB disclosures in his column stating that the book of Dr Yuvegina Albats states that the KGB had sought from the Central Committee of the CPSU "authorization to make payments in US dollars to the family members of Mr. Rajiv Gandhi, namely Sonia Gandhi, Rahul Gandhi and Ms Paola Maino, mother of Sonia Gandhi."

- (d) On 29.4.2009 the exposes in the Swiss magazine and the book on KGB were recalled and analyzed in an article by S Gurumurthy, one of the members of the Task Force, published in New Indian Express [29.4.2009]. This article was written explicitly in response to Smt Sonia Gandhi speech at Mangalore [27.4.2009] declaring that, "the Congress was taking steps to address the issue of untaxed Indian money in Swiss banks" and questioning how Smt Sonia Gandhi could vow to bring back the Indian monies stashed when there is an un-rebutted allegation in the media that she has inherited some \$2.2 billion in secret Swiss bank accounts.

[<http://expressbuzz.com/biography/who-will-probe-first-familys-billions/62676.html>]

- (e) In the recent issue of 'India Today dated 27.12.2010' the well-known senior lawyer Ram Jethmalani has referred to the Swiss magazine expose' regarding \$2.2 billions, being the alleged bribes taken by late Shri Rajiv Gandhi having stood deposited in secret banks; the senior lawyer has also asked in his article where that money is now?

- (f) On 3.1.2011, in an article titled "Zero Tolerance, Secret billions" published in the New Indian Express, S. Gurumurthy has recalled the above media disclosures in India and abroad.

[<http://expressbuzz.com/biography/Following-Rajivs-risky-steps/236261.html>]

It is evident from the above media reports in India that the stunning disclosures in the Schweizer Illustrierte and in the book of Dr Yuvegina Albats have been

followed up and carried in the media here. Therefore on the ground that such expose's were carried in media outside it cannot possibly be said that the members of the Congress President's family were unaware of the reports and their contents. It must always have been known to them that such serious allegations had been made against them by media investigation outside in Switzerland and in Russia. So they could not deny there were aware of not only exposes but also the serious nature of the allegations against them, which involve more than charge of bribe.

Yet none of the members of the family of the President of the Congress Party and the Chairpersen of UPA and NAC have taken any effort to deny, dispute or sue the media in India or outside. It is a matter of serious concern. These allegations are serious enough to warrant civil, criminal and libel action. The UPA government, particularly the Congress Party has a moral and national duty to clear the name of the former Prime minister of India, which stands seriously damaged in view of these media reports. It is important that we hold our heads high about our current and late leaders.

The writers who have referred to the above allegations in the world media have pointed out how when a similar charge was made against the former Prime Minister of India late Shri Morarji Desai by the Pulitzer price winner writer Seymour Hersh, late Shri Desai, ripe old and 87 filed a libel suit for \$50 million in US and when the suit came up, he was 93 and so could not travel. Yet Mr. Henry Kissinger stepped into the witness box and denied all allegations against late Shri Desai. This move saved the reputation of not just late Shri Morarji Desai, but, of the nation itself.

XX. The government suffers from utter lack of credibility

31/05 2010.18:56 FAX

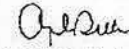
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Copy also for information to:

Deputy Chairman, Planning Commission and Members, Planning Commission.

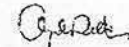


(Ajit Seth)

Secretary (Coordination & P.G.)

Copy also to :

- (i) Secretary to the President
- (ii) Secretary to the Vice President
- (iii) Principal Secretary to the Prime Minister
- (iv) Secretary, National Advisory Council
- (v) All Secretaries to the Government of India



(Ajit Seth)

Secretary (Coordination & P.G.)

It is evident from the fact that the four instances cited that the UPA government suffers from serious loss of credibility, particularly because the family of the President of the Congress Party who is also the Chairperson of the UPA and the NAC herself is alleged to have Secret account in Swiss banks and also alleged to have accepted bribes from the KGB and such serious allegations have been rebutted nor the media making such allegations have been sued. The declarations of the Congress President and the UPA government that it would take corruption head on and also bring the monies stashed abroad back do not carry conviction with the people. When there are such serious allegations how would the bureaucracy, which is supposed to undertake studies and suggest policies for the recovery of the monies stashed away abroad and execute such to recover the illegal funds of Indians stashed abroad, be free to do its work, even assuming that it is keen and honest enough to undertake the strenuous and difficult task. So the UPA government suffers from serious credibility gap, which it must address first.

When, in this background, the government is unwilling to open the names of Indians who have deposits in Lichtenstein Bank, treat their names confidential and close their case as just tax evasion, the apprehension in the public mind that the government has something to conceal is inevitable. The same applies to the Hasan Ali and Quattrocchi cases where the government is virtually seen to be colluding with the buccaneers to bury their cases. This impression is self evident in the way the UPA government is turning a blind eye to the serious allegations that billions of dollars are lying in secret Swiss bank accounts for the benefit of the family of the Chairperson of the UPA and the NAC who is also the Congress President.

It is in this context the four instances cited, namely the Lichtenstein Bank issue, Hasan Ali affair, Quattrocchi pay off and the alleged Secret Swiss accounts are relevant. Because of these issues the so-called efforts cited by the UPA government to unearth the black money abroad lacks credibility. That the Indian government is not keen on securing the details of the Lichtenstein Bank details; that it is not keen on fixing the slush monies of Quattrocchi and Hasan Ali; and that it is not bothered about the media exposures on the family of Smt Sonia Gandhi's alleged billions abroad is also known the foreign countries, particularly Switzerland from whom the Indian government is "seeking" assistance to track the illegal funds of Indians abroad. Unless the credibility of the government is established within and outside India, there is no way the Indian efforts to get at the huge capital of India that has been looted from India can be traced and brought back to India. Even after establishing the credibility of our pursuit and the sincerity of our efforts it will take a long time to get at the identity of the buccaneers and the actual monies hidden in secrecy, in tax havens and secret banks abroad.

In a recent press conference Shri Pranab Mukherjee unveiled a five point agenda but alas these are good intentions. He was stressing on double taxation treaty. We feel India should take the lead in creating a new global financial architecture instead of harping on existing instrumentalities. Even in that press conference there was some misleading information.

He mentioned that it was a private Deal between US government and UBS bank to get the names of Americans holding money in the UBS Bank. It is not a private deal and our FM has been completely misled. It is a deal between US government

XXV. Conclusion

Our Republic is under siege. Our polity is in shambles. We are at cross roads. Wiki leaks mocks at us in terms of revealing the names of our current icons as men who plundered. It is possible that foreign spy agencies know the names. Our leadership may be under blackmail and our policy formulations may have been compromised. We are in an extraordinary time. This ancient nation rebuilt by Mahatma Gandhi; Sardar Patel; Pundit Nehru; Babasaheb Ambedkar; Netaji Bose; Rajaji and many other eminent men who towered over our mother earth is in crisis because of these plunderers. As a nation, we owe it to the deprived and ordinary people of India and its future citizens to perform the sacred duty of unearthing these vast national resources hidden abroad which has the potential to transform the country into a developed nation much sooner than we can otherwise do. India is not only a country, but, also a great civilization, which has from time immemorial propagated non conflicting ideas and practiced non-conflicting methods. As a rising nation, we need to set proper standards for ourselves so that we become the alternative model for the world of conflict in search of peace and harmony. Being viewed as a corrupt and dishonest nation, and being seen as a nation of buccaneers who bolt away with hundreds and thousands of billions of Dollars when a vast section of the ordinary people of this country are in penury, will hardly give us the moral and ethical authority to be of example to the world. The time is propitious. The entire world opinion is converging against tax havens, secret banking and evil monies. The issue spills beyond economic stability; it has the potential to dynamite the economic system itself; it has potential to destroy the global security itself as the terrorists are funded by secret and not open financial system. The Task Force is of the view that the information and the ideas contained in this and in its earlier report must be taken to the people of India at various levels. The Task Force hopes that

the BJP will dedicate itself to the cause and associate as many critical forces, in and outside politics, in the sacred agenda.

Dated 31st January 2011

S. Gurumurthy

Ajit Doval

R. Vaidyanathan

Mahesh Jethmalani

10 JANPATH INFLUENCING HASAN CASE: JETHMALANI

Prabhakar Rao Voruganti | ENS
New Delhi, April 8

INDIAN EXPRESS
SENIOR advocate and former Union Law Minister Ram Jethmalani on Friday stunned a Supreme Court Bench, when he told them that 10 Janpath (referring to Sonia Gandhi) was directly intervening in Enforcement Directorate's investigation of cases on black money stashed abroad, especially with regard to that of jailed Pune stud-farm owner Hasan Ali.

Jethmalani also told the apex court that two letters were written to the Maharashtra Chief Minister by Congress leader Ahmed Patel on the issue. The senior advocate also placed before the Bench of Justices B Sudershan Reddy and S S Nijjar, a recorded interrogation of Ali by suspended Maharashtra DCP Ashok Deshbhratar.

The Supreme Court was also told that the ED had allegedly threatened IIT professor S K Dubey, who is one of the petitioners in the black money case, for complaining against ED chief Arun Mathur to the Prime Minister.

The Bench said it was surprised at such allegations of a threat to Dubey and directed the Police Commissioner of Delhi to take action on this and submit an action-taken report by next Friday.

'Sonia meddling in Hasan case'

Prabhakar Rao Voruganti | ENS
New Delhi, April 8

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Jethmalani said Congress leader Ahmed Patel had written two letters to the Maharashtra CM on the issue. The senior advocate also placed before the Bench of Justices B Sudershan Reddy and S S Nijjar, a recorded interrogation of Ali Maharashtra DCP Ashok Deshbhratar, who was suspended, it is claimed to scuttle the investigation.

The apex court was also

told that the ED had allegedly threatened IIT professor S K Dubey—one of the petitioners in the black money case—for complaining against ED chief Arun Mathur to the Prime Minister.

The Bench said it was surprised at such allegations of a threat to Dubey and directed the Police Commissioner of Delhi to take action on this and submit an action-taken report by next Friday.

191

JANATA PARTY**DR. SUBRAMANIAN SWAMY** Ph.D. (Harvard)

President, Janata Party (1989 -)

Minister for Commerce, Law & Justice (1990-91)

Chairman (with Cabinet rank)

Commission on Labour Standards (1994-96)

Professor of Economics: IIT Delhi (1969-91) &

Faculty of Economics, Harvard (1963-9; 1985-6; 2000-4)

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February 2, 2004.

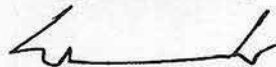
Mr.U.S.Misra,
 Director,
 CBI,
 CGO Complex,
 New Delhi.

Re: Complaint of offences committed under IPC, RPA, 1950, 1951 and
 PCA, 1988.

Dear Sir,

1. I enclose with this a news item in the Indian Express based on Reuter's report that the Congress Party headed by Ms. Sonia Gandhi has been receiving funds as bribes from the erstwhile ruler of Iraq Mr. Saddam Husain.
2. It is a cognizable offence. You may immediately register an FIR into the offences committed as per information contained in the Reuter's report and investigate the same with intimation to me as Complainant.

Yours faithfully,



(SUBRAMANIAN SWAMY)

INDIAN EXPRESS, JANUARY 28, 2004.

Saddam greased palms for support, says report

■ List has names from Russian Church, PLO to Cong

KHALED YACOB OWES
BAGHDAD, JANUARY 27

IRAQ will investigate allegations that officials and businessmen worldwide illegally received oil in exchange for supporting Saddam Hussein, officials said on Tuesday.

Their statements came after *Al-Mada*, a Baghdad newspaper, published a list it said was based on Oil Ministry documents showing 46 individuals, companies and organisations from inside and outside Iraq who were given millions of bar-

rels of oil. "I think the list is true. I will demand a probe. These people must be prosecuted," Naseer Chaderji, a Governing Council member, said.

The list includes members of Arab ruling families, religious organisations, politicians and political parties from Egypt, Jordan, Syria, the UAE, Turkey, Sudan, China, Austria, France and other countries. Organisations named include the Russian Orthodox Church and the Russian Communist Party, India's Congress Party and the PLO.

Assem Jihad, an Oil Ministry spokesman, said documents looted from the Oil Ministry after Baghdad fell to US forces on April 9 may prove that Saddam used bribery to gain support. "Anyone involved in stealing Iraqi wealth will be prosecuted," Jihad said.

Officials say they have stopped selling oil to companies that may have acted as fronts to Saddam supporters. An Iraqi National Congress spokesman, said even Arab oligarchs from oil producing nations received oil. — Reuters

Bribe allegation against Sonia

Names her in Saddam's oil-for-support scandal

By M K Tayal
mktayal@mid-day.com

A 'BRIBE' allegation by an Iraqi newspaper that names individuals from France, Egypt, Jordan, UAE, Turkey, China, Austria, Lebanon, Indonesia and Russia including prime ministers, presidents' sons, churches and businessmen besides prominent Indian Congress party leaders including leader of Opposition Sonia Gandhi has stirred trouble worldwide.



The Iraqi governing council ordered a probe and sought the documents, which revealed that the ministry had paid millions of oil barrels to seek support for Saddam.

But the Congress Party, which is named in the report, is not bothered and brushes aside these allegations. However its their bad luck that the Iraqi Oil Ministry has confirmed the documents to be authentic. The Bharatiya Janata Party (BJP) has asked for an inquiry by the Centre.

An independent newspaper, al-Mada, published a list of nearly 250 persons from many Middle-Eastern, European and Asian countries who illegally received millions of oil barrels in exchange from supporting former Iraqi President Saddam Hussein. The Russian Orthodox Church and the Russian Communist Party, Indian National Congress and the Palestinian Liberation Organization are some prominent organisations named in the documents. Some companies in Switzerland and Italy too have been named.

According to reports, Iraqi oil ministry spokesperson Assem Jihad said thousands of documents were looted

from the State Oil Marketing Organization after Baghdad fell to US forces on April 9, 2003, may prove that Saddam used bribery to gain support. The documents are related to sale of oil from 1999-2002 and were recovered from state oil marketing organisation.

"I think the list is true. I will demand an investigation. These people must be prosecuted," Naseer Chaderji, a Governing Council member was quoted by the Reuters news agency.

The report has rattled governments. First, the Iraqi governing council ordered a probe and sought the documents, which revealed that the ministry had paid millions of oil barrels to seek support for Saddam. Jordan and Bulgaria have said they will investigate their citizens who appear on the list. Meanwhile, a business

promotion group in France admitted accepting oil but said it was perfectly legal.

But in India, the Congress party was not willing to get bogged down by baseless allegations. "This is absolutely wild. These allegations are baseless. We do not take this seriously," says Congress spokesperson Anand Sharma.

"This is a ridiculous and vague story. What can be said of it," Congress leader S Jaipal Reddy remarked.

On the other hand, the BJP was silently pushing that the matters be taken earnestly in an election year that could benefit its poll prospects.

BJP general secretary Mukhtar Abbas Naqvi said, "It is a serious matter and aspersions have been cast on the ruling party for nearly 50 years. It puts a question mark on the country. The Congress should come out clear," he said.

He also demanded the NDA Government to initiate an inquiry and also assist the Iraqi Governing Council in the inquiry they are conducting.

BJP chief whip V K Malhotra too urged the Centre to seek more details from the IGC about its investigations.

However, Janata Party chief Subramanian Swamy, fighting a long legal and political battle against corruption at high places particularly aimed at Sonia and her son Rahul, could not have asked for more proof to his allegations that mother and son duo have

been Russian spy agency KGB's agents.

He plans to file an application in the Delhi High Court on February 4, 2004 to add to the public interest litigation for probing charges of KGB financing Sonia and Rahul.

Sonia, Dr Swamy says, "is Shrimati 420 of Indian politics. She has faked her name, her place of birth and her education qualification to cover her family's Nazi and fascist past." However, Dr Swamy's problem is that most do not take his allegations seriously though he is trying to prove the unholy nexus in the court of law.

The United Nations allowed Iraq to sell oil from 1996-2003 under an agreement imposing a condition that proceeds from the sales would be used to buy basic supplies.

According to reports, bankers say some multinational companies selling goods to Iraq may have paid commissions to Iraqi officials that were deposited in Arab banks in exchange for winning contracts under the oil for food deal. Oil traders say Iraq also smuggled oil through southern ports not monitored by the UN and through a pipeline running to Syria. Damascus says the pipeline was only operating for testing purposes.

There are 14 Jordanian and Lebanon citizens and companies on the list, 14 are from Syria and 11 from France.

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Annexure 11

THE HINDU

Online edition of India's National Newspaper
Saturday, Oct 29, 2005

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CRICKET MANIA III

Front Page

Volcker Report names Natwar Singh and Congress Party as "beneficiaries"

Special Correspondent

- Iraqi oil sales under U.N. Oil-for-Food Programme
- Masfield AG was contracting company
- Contracts exceeded \$63 million in value
- Many Indian companies named

New Delhi: K. Natwar Singh, India's External Affairs Minister, as well as the Congress Party are listed in the recently released report of the Volcker Committee as "non-contractual beneficiaries" of Iraqi oil sales in 2001 under the United Nations Oil-for-Food Programme. The contracting company in both cases is named as Masfield AG.

The fifth and final report of the Independent Inquiry Committee, appointed by U.N. Secretary General Kofi Annan in April 2004 to investigate the administration and management of the Oil-for-Food Programme, is available at www.iic-offp.org.

Mr. Singh is shown in Table 3 of the Report as the non-contractual "beneficiary" in connection with 4 million barrels of oil allotted to Masfield AG, the contracting company, which actually lifted 1.936 million barrels out of this. The phase in which the oil was allocated is shown as 9.

In addition, the Congress Party is listed in the same table as the non-contractual "beneficiary" in connection with 4 million barrels allotted in phases 10, 11, 12 and 13. Out of this allocation, 1,001 million barrels were lifted. In this case, Masfield AG is shown as the contracting company in phase 10 (during which the 1,001 million barrels were lifted), but no name of the contracting company is mentioned for the subsequent phases.

The table also lists Reliance Petroleum Limited as a "beneficiary" from an allocation of 19 million barrels of oil to Alcon Petroleum Limited, the contracting company, which lifted 15.780 million barrels in phases 9, 10 and 11.

A yet to be identified Bhim Singh from India is also listed in the table as a "beneficiary," with no contracting company mentioned by name. In Bhim Singh's case, 7,300 million barrels were allocated but nothing of this was lifted, according to the table.



Presenting the



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"Under the Programme," the Volcker Committee report says, "the Government of Iraq sold \$64.2 billion of oil to 248 companies. In turn, 3614 companies sold \$34.5 billion of humanitarian goods to Iraq... The Report illustrates the manner in which Iraq manipulated the Programme to dispense contracts on the basis of political preference and to derive illicit payments from companies that obtained oil and humanitarian goods contracts."

"Several of the tables," the report explains, "identify specific illicit payments made in connection with oil and humanitarian contracts under the Programme. Oil surcharges were paid in connection with the contracts of 139 companies, and humanitarian kickbacks were paid in connection with the contracts of 2,253 companies." The principal data sources are Ministries in the Government of Iraq and banks; in some cases information was provided by the company contractors. The Committee estimates the total "illicit income received by Iraq under the Programme" at \$1.8 billion.

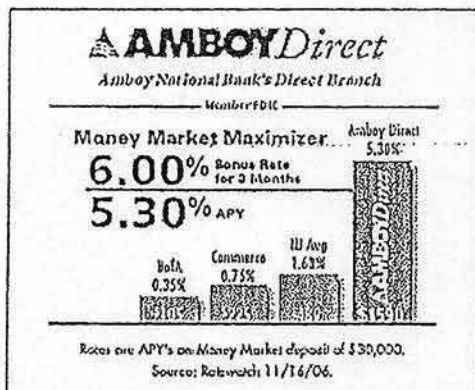
The Volcker Committee report is at pains to clarify that the identification of a company's contract as "the subject of an illicit payment" does not necessarily mean that the company made, authorised, or knew about the payment.

Table 5, which shows surcharge payments associated with a contracting company, shows the value of Contract M/09/54 involving Masfield AG as being \$46.225 million; and the value of Contract M/10/57 involving the same company as being \$16.808 million. Surcharge payments amounting to \$748,540 were shown as having been paid in 2001 in connection with these two contracts.

A large number of Indian companies are listed in Table 7 dealing with illicit payments on contracts for humanitarian goods.

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News Update

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- Storm batters coastal Andhra, Rayalaseema
- Navy dismisses three officers
- Azad to be elected leader on Sunday
- 8-wicket win for India in second match
- A fine start for Rahul Dravid
- Chennaiites coping with the aftermath of rain havoc
- Calm after the storm
- Cheney aide Libby indicted, resigns
- P. Karam Singh to lead all-party team to Manmohan on Monday
- CM scheme for farmers' wards on track
- Red alert in Kerala against bird flu
- No Diwali gifts please, says PM
- Flood prompts move for revival of old scheme
- Council to go into charges against judges
- India-Bangladesh Home Secretary-level talks held
- Loudspeakers' ban can be relaxed: court
- Tandon denies charge
- No 'third-degree' measures, police told
- BJP wins local polls
- Modi strikes at critics; BJP gains in local polls
- Thrown out of train
- Youth alleges torture in police custody
- Accused in VHP activists' murder acquitted

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26015/70/83-IC
MOST IMMEDIATE
BY SPECIAL MESSENGER

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi-110001, the 12th April, 1983.

To

Shri R. Raghuraman,
Deputy Secretary (Home), Passport Deptt.,
Delhi administration,
Delhi.

Sub:- Registration as an Indian citizen under Section 5(1)©
of the Citizenship Act, 1955 – case of Smt. Maino Antonia
(Sonia) Gandhi.

Sir,

I am directed to refer to your letter No.F.9/8/83-PP(I)1372, dated the 6th April, 1983 on the subject cited above.

2. The Government of India have decided to register the above applicant as a citizen of India under Section 5(1)© of the Citizenship Act, 1955. She may be asked to –

Renounce her Italian nationality in accordance with the procedure prescribed by Italian Embassy and surrender her Italian passport and submit evidence of it.

3. The documentary evidence regarding renunciation of Italian nationality, three copies of her recent passport size photographs duly attested by a magistrate/gazetted officer on the reverse together with the particulars indicated in Form VI of Schedule I to the Citizenship Rules, 1956 and three specimen signatures of the application on a plain paper, when received, may be forwarded to this Ministry for further action.

Yours faithfully,

Sd/- T.O. KHAKHA
UNDER SECY. TO THE GOVT.OF INDIA

21862817
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SUBRAMANIAN SWAMY Ph.D. (Harvard)

President, Janata Party (1989 -)

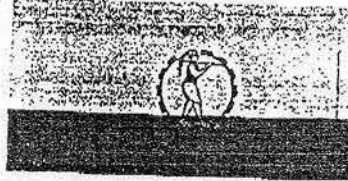
Minister for Commerce, Law & Justice (1990-91)

Chairman (with Cabinet rank)

Commission on Labour Standards (1994-96)

Professor of Economics: IIT Delhi (1969-91) &

Faculty of Economics, Harvard (1963-9; 1985-6; 2000-4)

**JANATA PARTY**

A-77, Nizamuddin (East) New Delhi - 110 013

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Mobile : 9810194279

Website : www.janataparty.org

E-mail : swamy@post.harvard.edu

Dr. Abdul Kalam
President of India
Rashtrapati Bhavan
New Delhi 110001.

May 15, 2004

Dear Mr. President,

I see from the media that Ms. Sonia Gandhi, President of the Congress Party is meeting you on May 17th, to stake a claim be appointed by you as Prime Minister under Article 75 of the Constitution.

You may recall that in Ms. Jayalalitha versus Kapoor and others (2001), in which I was a petitioner too, the Supreme Court held that the President and Governor's do not have unfettered powers to appoint as PM or CM respectively, anyone who merely enjoys the majority of the elected House. There are disqualifications to be considered as well.

In particular, in this case Ms. Sonia Gandhi, she is subject to the proviso under Section 5 of the Citizenship Act, a reciprocal disqualification* to be the PM of the country since she is Italian.

Kindly therefore ascertain the legal position from the Home Minister before considering Ms. Gandhi's claim.

With this letter, I am enclosing a letter I have written to the Home Minister sometime ago.

Best regards,

Yours sincerely,

(SUBRAMANIAN SWAMY)

Dr. SUBRAMANIAN SWAMY
ALL INDIA PRESIDENT.
JANATA PARTY.



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1, Lal Bahadur Shastri Road, Bibikulam,
MADURAI - 625 002.
Ph : (0452) 2533626, Fax : 2533626

Date :

Date:02.05.04

Mr.L.K.Advani
Deputy Prime Minister
North Block (Home Ministry)
New Delhi 110 001.

Dear Advaniji:

I write to urge you to have issued an amplification that is
Gazetted on the reciprocal conditions to be imposed, country-wise, on
foreigners who become citizens of India under Section 5 of the Citizenship
Act. The Government is obliged to do so, which is clear from the proviso to the
said Section read with the General Clauses Act.

In particular, this is relevant, for example, to a citizen of Italy who
on becoming a citizen of India may try to become the Prime Minister of this
nation.

Best Regards,

Yours Sincerely

(SUBRAMANIAN SWAMY)

100 Questions About Ms Sonia Gandhi

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A Photocopy of the extract from electoral rolls of 1980, indicating that Ms Sonia was a voter, when she did not yet acquire the citizenship of Bharat.

EXTRACT FROM ELECTORAL ROLLS OF 1980
(Under Rule 33 of Registration of Electoral Rule, 1960)

New Delhi Parliament

ELECTORAL ROLL OF ASSEMBLY CONSTITUENCY: Constituency
(NATIONAL CAPITAL TERRITORY OF DELHI) as on 01.01.1980 as the qualifying date.

YEAR 1980 POLLING STATION NO.: 145

LOCALITY Safdar Jung Road

Sr. No	H. No.	Name of Elector	Father's/ Mother's/ Husband's Name	Male/ Female	Approximate age as on 1.1.1980
385		Indira Gandhi	Feroze Gandhi	F	64
386		Rajiv Gandhi	Feroze Gandhi	M	37
387		Sanjay Gandhi	Feroze Gandhi	M	35
388		Sonia Gandhi	Rajiv Gandhi	F	35
389		Manika Gandhi	Sanjay Gandhi	F	28

Note: The names of the Electors at S.No. 387 & 388 deleted from Electoral Rolls in 1981 & 1982 respectively.

Certified

This is a photocopy of the Gandhi family's name in the 1980 rolls



Frontline

India's National Magazine
From the publishers of THE HINDU

Vol. 15 :: No. 09 :: Apr. 25 - May 08, 1998

COVER STORY

In Maino country

In pursuit of the Italian connection, a trip to a tiny, dusty industrial town on the suburbs of Torino where Sonia Gandhi grew up.

VAIJU NARAVANE

recently in Orbassano

THE car hurtles down the dangerous and ageing motorway between Milan and Turin at 170 km an hour. The motorway, Italy's first, was converted from a two-lane road to a three-lane highway to cope with the ever-increasing traffic between the country's two largest industrial cities. The third lane was created by carving out a certain width each from the security lane and the two existing lanes, with the result that the width of the lanes now do not conform to European Union norms. So when an agitated and reckless driver overtakes me, horn blaring, at some 190 kmph on the right (wrong) side, I begin mentally saying my adieux.

It is a big car, a powerful Alfa Romeo 155 Turbo 2.5, 16V injection, loaned to me by a friend (how else will you get to that godforsaken place, he had said rhetorically, tossing me the keys), and it eats up the kilometres effortlessly. The cherry trees are in bloom and the paddyfields that make up the flat monotonous landscape of the plains of the Po river are thirsting for water after a mild but very dry winter.

This is my third foray into the land of Sonia Mainoputri. Late for a "photo appointment" with Avtar Singh Rana, the director of design and development of Fiat's Lancia cars, who is also a municipal councillor for Orbassano, I step on the accelerator pedal.

The first time I went to the tiny, dusty industrial suburb on the outskirts of Torino where Sonia Gandhi grew up was just after Rajiv Gandhi's assassination in 1991. The town of 22,000 inhabitants then talked of nothing but the "tragic end of the fable of our local Cenerentola" (Cinderella). Now that Sonia has seized the reins of the Congress party, the comments are more caustic, especially from people who knew her as a child and as a young girl.

In the small unpretentious first-floor office of Orbassano's Mayor Graziano Dell'Acqua, an overly pink picture of Rajiv Gandhi smiles down from the wall that he shares with a

silver crucifix and a photo of Italy's President Oscar Luigi Scalfaro. The bespectacled, mild-mannered man who sits at the functional but cluttered desk gives a faint smile. "Yes, I know that photograph looks like one of the holy pictures of the saints issued by the Church. It seems apt here somehow, for in India you do tend, don't you, to give a divine aura to your defunct political leaders," says Dell'Acqua. "Sonia's mother Paola Predebon came to see me after the assassination with a message from Sonia asking if we would honour the memory of her husband. I was very happy to oblige."

V.SUDERSHAN



At the Rajiv Gandhi samadhi on his first death anniversary, Sonia Gandhi with Priyanka, Rahul, mother Paola Predebon and sister Nadia.

The municipal building sits cheek-by-jowl with the church in Orbassano's main square, a small crossroads with a bar at either end where the locals meet to raise a glass or two after Mass. Most of Orbassano's inhabitants either work at nearby Fiat factories or are in some way dependent on the automobile giant. With the exception of the church square which has a certain distinction, albeit dubious, Orbassano is a muddle of ill-constructed apartment blocks and individual houses, hurriedly slapped together in the early 1950s when industrial suburbs mushroomed overnight in the wake of the post-War boom in northern Italy. There is no beauty and little charm. Orbassano is resolutely low brow, resolutely middle class.

"This is not a rich town despite the fact that it has always been at a crossroads. When I came here in 1961 there were only 6,000 inhabitants. We have had three successive waves of "immigration" - first from Calabria, then Sicily and then Sardinia. Sonia's father came here even before that, in the 1950s. I remember Sonia as a young girl. She was like any other teenager enjoying dancing, dressing up and going out. She hasn't been back since I have been Mayor, or if she has, we haven't known of it. Just as well, it would present a serious security problem we wouldn't be able to handle. We are proud of her for she is the daughter of the soil who has made good. We have two celebrities from Orbassano. The first is Cardinal Martini, the Archbishop of Milan, and the second is Sonia Gandhi. I know she has renounced her Italian nationality, but I would gladly make her an honorary citizen of Orbassano. I don't know what she's like now, but I think if he chose her," says Dell'Acqua, throwing an arch look at the picture of Rajiv Gandhi, "then she must be a very special person."

"Even so, I wonder if we in Italy would accept a foreigner, and a woman at that, to take over a party which has symbolised the country's struggle against foreign rule and which continues to enjoy great, if diminished, support across the land. That a certain section of Indians have trusted her with their destiny speaks volumes for the tolerance of India," concludes Dell'Acqua.

IN the church square, the sun is shining. It is a hot, brilliant day, unusual for this time of the year. A funeral is in progress. A 67-year-old man has died and almost all the mourners are above 50 years of age. Many of them know the Maino family. Paola Predebon is a devout Catholic and a regular churchgoer. "She wasn't like this when her husband was alive. She had too much on her hands in the house; there were her three girls to bring up; and then Eugenio was a demanding husband, an authoritarian man.

Now with Nadia and Sonia away and only Anushka here, she has a lot of time for herself. Although she does go away quite a lot to visit her daughters, especially the younger one whose diplomat husband is now posted in London, I believe," says a silver-haired woman, who, with a coquettish and conspiratorial glance at her companion, a shocking bottle blonde, identifies herself as Giuseppina. She refuses to give her family name, and says she cannot tell me more. "I haven't seen Paola in a while, you know," she confides.

The old gentleman carrying a cane and downing a glass of Fernet Branca in the bar around the corner from the municipal office is loquacious. "I knew Stephano, or Eugenio Maino as he liked to be called, quite well. He has been dead these past ten years or more. Came here penniless as a mason and made good. Started a small construction business. Brought up his daughters in the old traditional way - church, confirmation, communion. Suspicious of foreigners, he was. I don't think Sonia's marriage pleased him very much. He certainly didn't go for it and the girl was given away by her maternal uncle Mario Predebon."

I ask him about Eugenio Maino's alleged Fascist sympathies. "That shouldn't surprise you. He came from Asiago not far from Vicenza in the Veneto region where nationalism was strong. He fought in the Russian campaign alongside the Germans and remained true to Fascist Nationalist ideology all his life. I have even heard it said that he belonged to the Salò Republic that Mussolini set up in 1943 after he was ousted by his son-in-law. That is what people say but I have no confirmation of it. He even gave his three daughters Russian names in honour of the campaign in which he fought. He venerated the Duce. Many still do," says Giovanni, referring to Italy's war-time Fascist dictator Benito Mussolini.

I set off for the Maino residence. The last time I visited, it was closed and shuttered. Now the windows are open and there is a large metal blue car parked in the driveway behind the high gate with its prominently displayed "Beware of Dog" sign. Number 14 Via Bellini is a large two-storey house painted a dull, dark ochre with chocolate brown shutters. In a generally poor and run-down area, the house is conspicuous by its neat and well-kept appearance. The neighbourhood is a mixture of Sardinian, Sicilian and Calabrese with a sprinkling of north Italian names: Podda, Ero, Bertorino, Gallino.

There are three names on the interphone outside. Maino A., Maino N. and Maino Predebon. I know that Anushka, Sonia's elder sister, is in town. I ring the bell.

"Who is it?" a querulous voice answers.

"An Indian journalist. I would like to speak to someone from the family," I answer.

The voice immediately becomes tough, aggressive. "There is no one here. Go away," it says peremptorily.

"When will they be back?" I persist.

"I don't know, not for a while. I am just the maid. I can't tell you anymore." I know that voice. It bears an uncanny resemblance to Sonia Gandhi's. The reaction does not surprise me.

As I walk away from the house I bump into two teenage girls, Serena and Sylvia. "Do you know who lives there?" I ask.

"Oh, that's the Maino residence," they say in unison. "Our mothers both know Sonia very well. They were in class together. Why don't you come with us?" Serena is 18, pimply, bespectacled and jolly. Sylvia is blonde, 21, serious and intellectual-looking. They are both studying at the local agricultural university.

Serena's house, at 36 Via Gramsci, is within a stone's throw of the Maino residence. I step out of the lift and into a virtual menagerie; there is a cat, a dog, a fish bowl, a canary cage, a hamster and a singing blackbird. "He's called Biagio, named after the Saint Protector of Throats," says Serena's mother, Innocenza Nocentini. She is a warm, ample woman with a heaving bosom and a ready smile. As if on cue, the bird first imitates my cough, then politely says good morning and follows it up with a most convincingly warbled version of "O Sole Mio", a perennial Italian favourite.

"He never does this for outsiders. He seems to trust and like you," Innocenza tells me. I am touched and flattered. "My son is getting married and I am making lace doilies for the wedding," she tells me proudly. "I was not well off like the Maino girls. I had to leave school and start working at the age of fourteen. I was at school with Sonia until the age of 12. After that she went to the more fashionable college of Maria Ausiliatrice in Giaveno, 15 km away, run by the nuns. Sonia was a year older than I - I was born in 1947, she in 1946. She was nice but always aware of her social superiority. But Anushka, her sister, is not nice. She is a nasty piece of work, that one. We were very upset by Sonia's husband's death. We were touched by her dignity and admired her for it. I think age and the tragedy have made her kinder. It shows in her face. Her son is the best-liked in the family. He seems to be a real gentleman. And so goodlooking! But the daughter takes after her aunt - tough, arrogant and stubborn. I remember the tantrums Priyanka threw when she came visiting with her mother - a typically rich, spoilt brat. We were all very disappointed when Sonia decided to enter politics. I'm sure she did it for her daughter. They also say there are corruption charges against the family, that Rajiv took a lot of money. But somehow I cannot believe he did it for himself. He was such a prince of a man. In any case no one who enters politics remains or emerges unscathed. Even the most honest person becomes a thief. So it was inevitable, I suppose. Whatever happens, I wish her well."

The Nocentini household is extremely modest. Innocenza's husband Nino has not studied beyond the third standard. He is now out of work and earns a living making metal pins for car headlights. "Each pin requires three different manipulations," he explains. "I get a pittance for making a thousand. This is how our black economy works."

"How many do you manage to make per day?" I ask.

"Oh thousands," he replies with a nonchalant shrug. "It's habit. I work at it for about eight hours a day."

Innocenza gives me a final hug. She presses a book into my hands as a parting gift. It is a political memoir by Giulio Andreotti, seven times Italy's Prime Minister and one of its longest-serving post-War Ministers who now stands charged with having links with the

mafia. "See what politics does to you," she laments as she closes the door.

Serena and Sylvia take me to Anushka's shop in Gerbola di Rivolta. They want to be photographed among the Indian artefacts there and I am happy to oblige. I remember my last trip to Orbassano. "Try Anushka's shop at the Pyramid commercial centre down at Rivolta. It's just a couple of kilometres away," a helpful neighbour had advised me.

The shop called Etnica is located in a lonely and depressing commercial complex a couple of km from Orbassano. It is a monstrous concrete structure topped by five scalloped wooden pyramids painted green. The shop itself is an oasis of good taste in a desert of semi-urban kitsch. There are some rare old *pichwais*. A couple of exquisite silver pieces from Bikaner. The display is an intelligent mix of old and new, antique objects and recent Indian artefacts. The prices are astoundingly high. I noticed goods like Shatoosh shawls, the export and sale of which is banned.

"I can't tell you the exact price of the Shatoosh. I received it a few days ago and the price has not been finalised. But it will certainly be between four and six million lire (between \$2,000 and \$3,000)," the shop assistant had told me on my last trip. A wooden cupboard from Kerala was selling for three million lire - \$1,500 - while the *pichwais* were priced even higher.

I had found the horsey-looking young woman minding the shop a little bizzare. She boasted about her trips to India to buy stuff for the shop but denied she or the shop had any connection with the Nehru-Gandhi family. "I'm told Sonia comes from somewhere around here," she said, trying to look vague, "but the shop has nothing to do with her. The owner is someone from Torino." I had persisted and she had once more vehemently denied any connection. I had found it strange that a shop assistant out in the Italian boondocks should speak fluent English and be so knowledgeable about Indian antiques. She must have a very generous employer indeed, I had mused, pondering over the mystery.

Now seeing me in the company of Serena and Sylvia, she blanches. We have walked into the shop and I have my camera ready. They turn around to greet her but she is already throwing us out unceremoniously. The shop assistant is none other than Aruna, Anushka's daughter and Sonia Gandhi's niece. The girls apologise profusely for her rudeness. "We knew she was arrogant and nasty, but not this nasty," they say.

Aruna and I exchange knowing looks. I am tempted to challenge her earlier claims. Then, feeling sorry for her, I take a picture of the shop from the outside and leave.

The shop continues to nibble at the edge of my consciousness like a buzzing bee that won't go away. There is something not quite right about it. It is incongruous, like a strange, exotic orchid blooming in the desert. It is miles away from anywhere, for to go to Orbassano one has to get off the motorway and drive a good 20 km or so up the road to Vicenza. And then who in Orbassano has the money to buy such very expensive things which, in any case do not appeal to an average Italian. A shop like this would do well in Rome or Milano. But Orbassano? Its like setting up an expensive store selling Swedish furniture on the outskirts of Faizabad.

PABLO BARTHOLOMEW/GAMMA/LIAISON



At the death anniversary of Indira Gandhi, with

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Webdirectory](#)[india.gov.in](#)
The national portal of India**Information under section 4(I) (b) of RTI Act, 2005**

	Obligatory Items Under Section 4 (I)(b) of RTI ACT, 2005 to publish.	Present status of Information.
i.	The particulars of its organization, functions and duties	The National Advisory Council has been constituted by the Central Government in exercise of the executive powers vested in it under the Constitution. Details are available on the website of NAC under the head 'Constitution of NAC' [i] .
ii.	The powers and duties of its officers and employees.	Work Allocation [i]
iii.	The procedure followed in its decision making process, including channels of supervision and accountability.	The policy issues taken up for consideration are deliberated by a Working Group of Members of NAC within a broad framework of agreed procedures. Upon receipt of recommendations from the Working Group, the subject is taken up for consideration by the NAC. Decisions of the NAC are collectively made. The recommendations, if any, made by the NAC are conveyed to the Government and the gist of recommendations is hosted on the website of NAC.
iv.	The norms set by it for the discharge of its functions.	General norms/instructions applicable to Ministries/ Departments in Government of India apply to the NAC also in its administrative functions.
v.	The rules, regulations, instructions, manuals and records used by its employees for discharging its functions.	General rules/regulations etc applicable to Ministries/Departments in Government of India apply to NAC also.
vi.	A statement of the categories of the documents held by it or under its control.	NAC holds documents containing inputs from Ministries/Departments and other civil society organizations in the formulation of its recommendations to the Government; Minutes of the meetings of the NAC and Recommendations of the NAC to the Government.
vii.	The particulars of any arrangement that exist for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof.	NAC is an advisory body consisting of distinguished professionals from diverse fields. Various subjects from time to time are taken up for discussion by Members in smaller Working Groups prior to being placed before the full NAC. Within a broad framework of agreed procedures, different Working Groups hold consultations as per the general concurrence of the Working Group members.
viii.	A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meeting of these are open to the public, or the minutes of such meetings are accessible to the public.	There are no Councils, Committees, and other bodies constituted by the NAC. There are internal working groups details of which are available on the website of NAC. Press notes summarizing discussions and decisions taken in the NAC meetings are put up on the website of the NAC.
ix.	A directory of its officers and employees	directory of officers and employees [i]
x.	The monthly remuneration received by each of its officers and employees, including the system of compensation	details of Pay scales [i]

Rajiv Gandhi and Rahul.

Sylvia and Serena in tow, I drive up to the Convent of Maria Ausiliatrice in Giaveno, some 15 km from Orbassano. The school, a large, austere building with pale yellow shutters, is located on an incline on the Giaveno hill. This is a very special occasion for Sylvia whose mother, a classmate of Sonia's, studied here. We are received by a plump, ageing nun with gold fillings in her mouth who identifies herself as Sister Domenica. "I was only an assistant when Sonia studied here, but I remember her well. She was vivacious, but not particularly exuberant or effervescent. She studied just enough to get by. What mattered was, above all, having a good time, I think. How can a teacher ever divine the destiny God has in store for her pupils?" sighs Sister Domenica.

Sister Anna Maria is more forthright, blunt, ironical. She is a thin, austere looking nun. I imagine her to be a demanding and passionate teacher. We are standing in the entrance hall that leads into the upper courtyard. "I remember it like it was yesterday. Sonia was 20 years old. We were having a school reunion and she had come here with some old pupils. Dinner was being served when she suddenly announced she had to leave. "Why," one of us asked, "you've been away in England and we haven't seen much of you. Why don't you stay for dinner?"

"No," she said, "I can't stay. I have a special guest coming to dinner tonight." When we asked her who it was that was so special, she said with a peculiar toss of the head: "It's the son of Indira Gandhi, India's Prime Minister." I can still see her standing there. A little later she went to India. She had turned 21 by then. And then one day we opened our newspapers and saw the headlines. She had married Rajiv Gandhi. She had sent a telegram home to her father from India informing him of her decision as soon as she turned 21. She was always a little manipulative. She should do well in politics," adds Sister Anna Maria with a wry twist to her lips.

I visit the chapel with its murals and air of quiet repose. Sylvia can no longer contain her tears. "Can you imagine," she says, "my mother passed so many years of her life here. In a certain sense a part of me lurks in these walls." Sister Domenica puts a comforting arm around her shoulders.

Shyly Sister Domenica asks me if I would mind carrying a little memento for Sonia to India. She gives me a small olive wood carving of Santo Spirito, a representation of the Holy Spirit, that can be worn around the neck like an amulet.

My attempts to look into the Maino family fortunes draw a blank. Italians love showing off their cars, furs, jewels and clothes but they hate to tell you how much they earn or where their income comes from. Enquiries at the chamber of commerce lead nowhere.

Understandably, Sonia Gandhi has become something of a heroine in her home town. Gianlucca Gobbi who works for Radio Flash, an independent radio station in Turin says: "Of course people here have heard of the financial scandals surrounding Rajiv Gandhi. But Italians are so used to corrupt politicians that they tend not to hold that against her. And then the amount involved is not very big. Billions of dollars were stolen by Italian politicians as the Clean Hands investigation revealed. We all know about the links between the mafia and politicians. So all that talk about corruption does not bother us. However, I am surprised at what they told you at the shop. Why should

they deny links with the Gandhi family, with Sonia? What do they have to hide?"

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FILED

JAN 14 2009

Judge Nicholas J. Stranahan, Jr.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISIONINDIAN NATIONAL OVERSEAS
CONGRESS INC.

Plaintiff,

v.

SATYANARAYANA DOSAPATI,
NARESH SHARMA, MAHATMA
GANDHI CENTER & HINDUE TEMPLE,
INTERNATIONAL FOUNDATION
INC, SUNANDA THALI, HINUD
INTERNATIONAL COUNCIL AGAINST
DEFAMATION INC.,
And JOHN DOES 1-100,

Defendants

MID-L-8346-08
LETTER OPINION

Dear Counsel,

INTRODUCTION

This Court, on January 9, 2009, heard Oral Argument on Defendants Motion to Dismiss the Complaint, brought before the Court. The Court, after careful consideration of the papers submitted and any papers submitted in opposition, the arguments contained therein, and the oral arguments made, has made its determination as to the Motion herein.

FACTS

The Complaint at issue alleges one cause of action for libel based on a full-page political advertisement placed by an organization called the Forum for Saving Gandhi's Heritage in the *New York Times* on October 6, 2007. In the previously filed and later dismissed Monmouth County Complaint, plaintiff Indian National Overseas Congress (hereinafter "INOC") was alleged to be a New York domestic not-for-profit corporation and a "wholly-owned subsidiary organization" of the Indian National Congress Party. In the now pending Middlesex County Complaint, INOC claims its parent, the foreign

political party the Indian National Congress Party, was defamed. By way of relief, plaintiff seeks compensatory and punitive damages in the amount of \$20 million.

The ad at issue concerns the Indian National Congress Party's Italian-born chair, Sonia Gandhi. Ms. Gandhi is not a plaintiff in this case. The ad is a protest against Ms. Gandhi. It states that she is "NOT related to Mohatma Gandhi" and that, "she is attempting to misappropriate his name for political mileage and international legitimacy." The complaint identifies a single allegedly "knowingly false statement regarding the professional activities of the Indian National Congress" Party. The allegedly defamatory statement is that: "The Indian National Congress 'has [blow] up Rama Sethu, an ancient Hindu heritage monument."

DISCUSSION

Counsel for Defendants move to dismiss Plaintiff's Complaint based upon several arguments. Most troubling to this Court is the issue of assignment of tort claims.

Defendants argue that the Complaint's initial fatal flaw is that the INOC cannot bring this suit as the assignee of the Indian National Congress Party because defamation claims cannot be assigned. INOC knows that the Superior Court of New Jersey, Monmouth County, has already ruled that INOC could not bring this suit in its own name because an essential element in a libel claim is that the allegedly defamatory statements are "of and concerning" the plaintiff. The Monmouth County Court properly found that here, where the statements are not "of and concerning" INOC, the defamation claim had to be dismissed. That dismissal with prejudice was not appealed.

In response to the Monmouth County Court's dismissal with prejudice, INOC has refiled another complaint in this Court, now claiming that it obtained an assignment from the Indian National Congress Party of "its rights herein." However, Defendant alleges that this assignment has not been produced and even if it is produced, it is not valid under NJ law and thus this matter must again be dismissed.

It is well-settled under NJ law that "a tort claim cannot be assigned prior to judgment." Village of Ridgewood v. Shell Oil Co., 289 N.J. Super. 181, 195 (App. Div. 1996). Claims for defamation are tort claims. See Loigman v. Township Committee of Tp. Of Middletown, 185 N.J. 566, 588 (2006). Indeed, the Supreme Court has made clear

that courts view libel or slander as "an injury to a person" and "a tort." Canino v. New York News, Inc., 96 N.J. 189, 195 (1984).

In this matter, INOC is still not a proper party to this lawsuit because it has brought this defamation claim under an alleged assignment from the Indian National Congress Party. That assignment, however, is invalid and void. Therefore, defendant argues the Middlesex County Complaint must be dismissed with prejudice.

Plaintiff opposes this argument by asserting that not one case from any jurisdiction is cited by Movants in which a defamation complaint has been dismissed on this basis. Plaintiff claims that this is not a claim for "personal injuries" and there is no claim for emotional trauma or physical injury of any kind. Moreover, plaintiff claims that this is a "straw man" argument. INOC is merely the appendage of the Indian Congress Party it has authorized to carry out lawsuits on its behalf in this country and has been listed in the caption for administrative convenience in dealing with a foreign client. INOC is not suing on its own behalf; it is the agent of the Indian Congress Party for purposes of this litigation. Indian Congress Party subjects itself to the jurisdiction of this Court. If necessary, Plaintiff states that the pleadings will be amended to remove INOC and leave only the Indian Congress Party as the named Plaintiff.

In response to Plaintiff's statement that the pleadings will be amended to remove the INOC and leave only the Indian Congress Party as the named Plaintiff, defendant states that such an amendment would be futile. First, Plaintiff has failed to file a formal motion to amend and has failed to provide this Court with the proposed amended pleading. Therefore, Defendant argues that this Court should deny Plaintiff's request to amend its pleading on that ground alone. Second, Defendant argues that Plaintiff's request to amend its pleading should be denied because even if the Indian National Congress Party were substituted as the plaintiff in this action, the amended complaint would still be subject to dismissal because plaintiff has failed to plead a cause of action for defamation (1) because the statement is core political speech; (2) because plaintiff has failed to allege "actual malice" as required by New York Times Co. vs. Sullivan, 376 U.S. 254 (1964); and (3) because the statement at issue is either true, not defamatory, opinion, or hyperbole. Lastly, such a proposed amendment would be futile as the statute of limitations on this claim has expired.

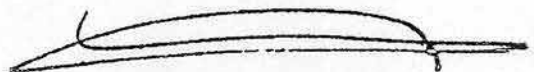
HOLDING

It is of this Court's opinion that Defendant's Motion to Dismiss Plaintiff's Complaint with prejudice should be GRANTED.


The Indian National Congress Party's alleged assignment of its defamation claim to the Indian National Overseas Congress is a legal nullity. "It is clear that under New Jersey law, that choses in actions arising out of tort are not assignable prior to judgment." East Orange Lumber Co. v. Feiganspan, 120 N.J.L 410, 199 A. 7778, 779 (1938). Furthermore, New Jersey law is clear that defamation claims are tort claims. See Loigman v. Township Committee of Tp. Of Middletown, 185 N.J. 566, 588 (2006). See also Canino v. New York News, Inc., 96 N.J. 189, 195 (1984) The Plaintiff has failed to identify any jurisdiction in which a court has permitted a defamation claim to be assigned. Plaintiff has also failed to provide this court with any certification, declaration or affidavit to support the existence of the purported assignment. Furthermore, Plaintiff has not provided this Court with any precedent that would support such a decision or that disputes the cases cited by defendants that: (1) tort claims cannot be assigned; and (2) a claim for defamation is a tort claim. Contrary to plaintiff's assertions, several jurisdictions have explicitly stated that defamation and slander actions cannot be assigned. As such, Plaintiff's Complaint should be dismissed with prejudice.

Secondly, Plaintiff has failed to bring a Motion to Amend to Substitute the Indian National Congress Party as the Plaintiff. Moreover, Plaintiff's request to amend its pleading is hereby denied because even if the Indian National Congress Party were substituted as the plaintiff in this action, the amended complaint is still subject to dismissal because the statute of limitations has now expired.

Dated: January 17, 2009



Nicholas J. Stroumtsos, Jr., J.S.C.



**HOW CAN SONIA POSSIBLY REPRESENT
MAHATMA GANDHI ON
INTERNATIONAL NON-VIOLENCE DAY?**

THEIR LIVES ARE.....


TRUTH VS FALSEHOOD

NON-VIOLENCE VS AGGRESSION

SACRIFICE VS SELF AGGRANDISEMENT

HONESTY VS DISHONESTY

TOLERANCE VS INTOLERANCE



UN's declaration of Mahatma Gandhi's birthday on Oct 2 as the International Non-Violence day is commendable. However, instead of a true Gandhian delivering his message of peace & non-violence, Sonia Gandhi who is not a representative of Gandhian values is chosen.

- Sonia Maino Gandhi is **NOT** related to Mahatma Gandhi. She is attempting to misappropriate his name for political mileage and international legitimacy. (see 'Truth About Sonia' at <http://gandhiheritage.org>)
- She is known to be vindictive and undemocratic. Her party uses various mechanisms such as tax raids, direct threats to subjugate opposition. ('Know your Sonia' by Dr. Subramanian Swamy, visiting Harvard Professor)
- Due to her party's pro-terrorist policies, India has second highest number of terrorism victims after Iraq. Her Govt. is requesting clemency to Alzal Guru, the mastermind of attack on Indian parliament. In pursuit of Muslim vote banks, it created soft borders & turned a blind eye towards Islamic fundamentalism.
- Her respect for human rights is best explained by her decision to make a prime instigator of the anti-Sikh riots (that burnt alive 3000 Sikhs) a key central government minister in India.
- Her party has shown religious intolerance towards 900 million Hindus by blowing up Rama Sethu, an ancient Hindu heritage monument. This is similar to Taliban blowing up the Bamyay Buddhas.
- Gandhi is an embodiment of Hinduism with deep respect for all religions. He called religious conversions the deadliest poison that lethally destroys cultures of the world. Since Sonia came to power, there is a crusade to Christianize India, at the behest of international missionary enterprises.
- Her husband Rajiv Gandhi is alleged to have received payments from KGB. According to Schweizer Illustrated, Rajiv has a secret Swiss account of 2 billion dollars. Her son Rahul projected as next Prime Minister of India, was also detained by FBI with large unaccounted cash at Boston in 2001. ('The State Within a State' by Yurygeny Altsh, Swiss magazine Schweizer Illustration 11/1991, Indo Asian News Service)
- Her party was involved in the UN Oil for Food Scam that helped Saddam Hussein. She was involved in numerous scams, scandals and controversies. Before entering India, she was an au-pair with modest means. Since then, she and her family members amassed millions through questionable means. (Recreated articles with proof by Dr. Subramanian Swamy at <http://subramanian.org> & www.aj.com, 'Know Your Sonia' by India First Foundation)

Successful Protest at UN attended by about 500 people.
contact gandhiheritage@gmail.com <http://gandhiheritage.org>

Deception

Sonia claims to have a degree from Cambridge University, UK, despite not studying beyond high school. She misled the President of India about the number of parliament members supporting her party to grab power.

Violence

Sonia's violence spans political, spiritual and physical spheres. Sonia locked the then Congress President with party goons in a toilet and declared herself Party President. Her claim for this position is that she is the wife of an ex-Prime Minister.

Corruption & Fraud

With only a high school degree and no technical skills, she started a technical services company, used her connections to get contracts and paid herself handsomely. She violated multiple laws of the country with impunity. India's security was compromised when her family friend Qudusrood (Q) became an agent for procuring arms and offered kickbacks worth millions of dollars. Using proximity to high places, Q brokered many questionable multi-million dollar deals for the Italian company Snam Progetti. Sonia has amassed millions through trusts running in her dynasty's names. From the time Sonia entered India, she has looted the country on a large scale.

Intolerance

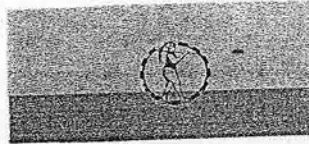
Gandhi envisaged the motto 'Truth alone Triumphs' that is printed on official documents and coins. As soon as Sonia got hold of power, it was removed from documents & was replaced in coins by an image of Christ used by Louis The Pious (778-840).

Self-Aggrandizement

Mahatma Gandhi offered to be sacrificed rather than divide India whereas Sonia is dividing India for vote banks and selfish gains. Her policies have made the country a hot bed for terrorist violence.

Endorsed by Forum for saving Gandhi's Heritage consisting of Mahatma Gandhi International Foundation, Mahatma Gandhi Center & Hindu Temple, Indo Canadian Council, Kashmiri Taskforce, Indian American Intellectual Forum & Foundation of People in America & others on website

DR. SUBRAMANIAN SWAMY Ph.D. (Harvard)
President, Janata Party (1989 -)
Minister for Commerce, Law & Justice (1990-91)
Chairman (with Cabinet rank)
Commission on Labour Standards (1994-96)
Professor of Economics: HT Delhi (1969-91) &
Faculty of Economics, Harvard (1963-9, 1985-6, 2000-4)



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JANATA PARTY

A-77, Nizamuddin (East) New Delhi - 110 013
Phone : 24353805 Fax : 24357388
Mobile : 9810194279
Website : www.janataparty.org
E-mail : swamy@post.harvard.edu

17.01.2008

PRESS RELEASE

The suit for \$200million against alleged defamation by some NRIs of Mr.Sonia Gandhi, President of Indian National Congress, and filed in a US Court on her behalf by the Overseas Congress Party, in USA has again been dismissed by the US Court for want of credible locus standi. Ms.Sonia Gandhi had failed to appear in Court as witness for deposition on her behalf.

The judgment was delivered by Judge Nicholas J.Stroumtsor Jr., of the US District Court of New Jersey (equivalent to our High Court) on January 14, 2009 after hearing the arguments of the plaintiff (Congress Party) and defendants (the NRIs) who had taken out a full page advertisement in New York Times on October 2, 2007 to highlight charges against Ms.Sonia based on my pleadings in the Delhi High Court against her during 2001-2004.

This is the third time the Overseas Congress Party suit for defamation has been summarily dismissed by a US Court since October, 2007.

By failing to appear in Court to defend herself, Ms.Sonia Gandhi has proved thrice over that she has something to hide, and the charges against her on KGB connection, antique smuggling and falsification of her educational qualifications are true.


(SUBRAMANIAN SWAMY)

(9)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CW 7527/2001

SUBRAMANIAN SWAMY

..... Petitioner
in person.

versus

UOI

..... Respondent
Through Mr.K.K.Sud, ASG with
Mr.A.K.Dutt, Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL DEV SINGH
HON'BLE MR. JUSTICE R.S. SODHI

ORDER

20.11.2002

Learned counsel for the Central Bureau of Investigation states that the Central Bureau of Investigation shall examine the matter and in case it finds that a cognizable offence is made out the F.I.R. shall be registered.

List the matter on 12th February, 2003.

Central Bureau of Investigation shall file a detailed affidavit with regard to action taken by it.

ANIL DEV SINGH, J

R.S. SODHI, J

NOVEMBER 20, 2002
bp

Affidavit filed by R.S.

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TIMES OF INDIA 14/4/01

For smooth session this time, PM irons out Dr Swamy knot

■ Says we aren't probing his charges against Sonia ■ Satisfied, not convinced, says Cong

EXPRESS NEWS SERVICE,
NEW DELHI, APRIL 14

AFTER Prime Minister A B Vajpayee this evening clarified that no CBI inquiry has been ordered "at the moment" into the allegations levelled against Sonia Gandhi by Janata Party chief Subramaniam Swamy, the Congress said it was "reasonably satisfied" with the explanation.

This statement, coming hours after the Congress boycotted the all-party meeting over what it called the "witch-hunt" against its chief, clears the way, at least for now, for the start of the Parliament session on Monday, the previous one being paralyzed over the Tehelka tapes.

However, doubts still persist. The Congress said it wanted to know whether the reference to the CBI by the Minister of State for Personnel Vasundhara Raje Scindia had the Prime Minister's approval in the first place.

Vajpayee's clarification came at the meeting called to evolve a consensus on the need to ensure smooth functioning of Parliament from Monday after the Tehelka expose had paralysed the earlier part of the Budget session.

Speaking to reporters, Vajpayee said that the CBI had received Swamy's letter containing the allegations but added the



agency had not even taken prima facie cognisance of the charges.

On April 11, *The Indian Express* had reported that Swamy's list of allegations had been referred to the CBI. P C Sharma, Special Director, CBI, had said: "We are examining it and the course of action we should take, whether there should be a Preliminary Enquiry (PE) or something else. But we are looking at it comprehensively."

The mood in the non-Congress Opposition today was that the Congress should fight its own battle and should not expect their support. An indication of this was given by the CPI(M)'s Somnath Chatterjee, when asked if there would be floor co-ordination with the Congress, said: "No, not on all issues."

But the Opposition made it clear that it wanted a threadbare debate on the issue of corruption in the background of the Tehelka expose with the

CONTINUED ON PAGE 2

Sonia furious over inquiry against her, Rahul

The Times of India News Service

JAIPUR: Congress president Sonia Gandhi here on Saturday condemned the NDA government for initiating inquiry against her and her son Rahul Gandhi on a "flimsy complaint" by Janata Party leader Subramaniam Swamy.

Addressing a rally of Congress workers organised to focus the attention of the party workers on disclosures made by Tehelka, Sonia said the NDA government had chosen to implicate and victimise the opposition leaders on various charges to divert the attention of the people from corruption in defence and deals. "The NDA leaders have only harmed themselves while attempting mud slinging. Such rampant corruption at high places involving the security of the country which has been exposed beyond any doubt shows the NDA government in poor light," said Sonia.

"The Congress is duty bound and committed to expose all the weaknesses of the NDA government. We will continue our campaign against such corruption which endangers the security of the country," she said.

September 16, 2004

SONIA GANDHI
CHAIRPERSON
NATIONAL ADVISORY COUNCIL

Dear Prime Minister,

I have been informed that the Government is considering the reconstitution of the Disinvestment Commission and setting up, in its place, a new Board for Reconstruction of Public Sector Enterprises. In this regard, I would like to draw your attention to the following commitment made in the National Common Minimum Programme:-

“The UPA is pledged to devolve full managerial and commercial autonomy to successful, profit making companies operating in a competitive environment.”

In this regard, I would like to suggest that the first item in the terms of reference of the new Board should be such as to enable it to look into ways and means for strengthening Public Sector Enterprises in general and making them more autonomous and professional. The functioning of the Board should not be limited only to restructuring or advising on the closure or sale of Public Sector Enterprises that are referred to it by the Government.

I hope this matter will be considered on priority and a clear decision taken before the constitution of the Board for Reconstruction of Public Sector Enterprises.

With regards,

Yours sincerely,
Sonia Gandhi

Dr Manmohan Singh
Prime Minister of India
South Block
New Delhi.

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Annexure - ~~X~~

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Newsitem in Hindu, Delhi
19.11.2001

Move to appease Sonia Gandhi?

HINDU Nov 19, 2001

By Harish Khare

NEW DELHI, NOV. 18.

In an unexpected development, Mrs. Maneka Gandhi was stripped of her ministerial charge of 'Culture.' According to a late night communique from the Rashtrapati Bhavan, the President had, on the advice of the Prime Minister, assigned the Culture portfolio to Mr. Jagmohan, the Minister for Tourism. Mrs. Gandhi would, however, continue to be a Minister of State with independent charge of the Department of Statistics, with additional charge of 'Animal Care.'

It is understood that by stripping Mrs. Gandhi of the Culture portfolio, the Prime Minister, Mr. Atal Behari Vajpayee, has sought

to appease Mrs. Sonia Gandhi, the Congress president and Leader of the Opposition in the Lok Sabha. The two daughters-in-law of Mrs. Indira Gandhi have a distinctly sour and unfriendly relationship.

It is pointed out by perceptive observers that the immediate fall-out of the change in Mrs. Maneka Gandhi's charge is that Mrs. Sonia Gandhi would not have to share the limelight with her estranged sister-in-law on Monday when the Ministry of Culture organises a major function at the Indira Gandhi National Centre for the Arts on Indira Gandhi's birth anniversary.

Mrs. Maneka Gandhi had recently made a few caustic remarks about Mrs. Sonia Gandhi

and her claim to be a custodian of the Indira Gandhi legacy; the AICC establishment was quick to join issue with Mrs. Maneka Gandhi.

It should be noted that only yesterday, the Prime Minister had invited Mrs. Sonia Gandhi to his residence for an hour-long dialogue over various issues likely to figure in the Parliament session beginning on Monday. The invitation to Mrs. Gandhi was described as an attempt to seek the cooperation of the Congress in making the Lok Sabha proceed constructively. And a day later, Mr. Vajpayee has moved Mrs. Maneka Gandhi out of the Ministry of Culture. An entirely personal gesture towards the Leader of the Opposition.

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13-11-2001 17:07

FROM SWAMY

TO

4354364

P.01



श्रीमती मेनका गांधी
SMT. MANEKA GANDHI

D. O. No. 31/P

Dated

MOS (C)/VIP/2001

ANNEXURE W

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संस्कृति राज्य मंत्री

(स्वतंत्र प्रभार)

भारत सरकार

शास्त्री भवन

नई दिल्ली-110 001

भारत

MINISTER OF STATE FOR CULTURE

(INDEPENDENT CHARGE)

GOVERNMENT OF INDIA

SHASTRI BHAWAN

NEW DELHI-110 001

INDIA

November 13, 2001

Dear Dr. Swamy,

This is to acknowledge receipt copy of your letter addressed to Shri Arun Shourie, Hon'ble Minister for Planning and Programme Implementation, on the subject of the illegal smuggling of antiques to Italy.

I will certainly looking into the matter and revert to you on the issue.

With regards,

Yours sincerely,

Maneka Gandhi
(SMT. MANEKA GANDHI)

Dr. Subramanian Swamy,
Member of Parliament,
A-77, Nizamuddin East,
New Delhi-110013.

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ANNEXURE H

(38)
Annexure 4

ARUN SHOURIE



Minister of State
Planning, Statistics & Programme
Implementation and Administrative
Reforms & Public Grievances
Government of India
New Delhi-110 001

D.O.No.64992/1/DPAT/PG-01/106/11/P
April 30, 2001

Dear Shri Ananth Kumar,

I am forwarding a letter from Dr. Subramanian Swamy, President, Janata Party addressed to Shri L.K. Advani, Home Minister. It alleges illegal export of our ancient treasures such as temple sculptures, National Museum items and precious gems.

2. Since the matter comes under your purview, I shall be grateful if you could get the matter examined and send an appropriate reply to Dr. Subramanian Swamy.

With regards,

Yours sincerely,
Sd/-
(Arun Shourie)

Shri Ananth Kumar,
Minister of Tourism and Culture,
Shastri Bhavan, New Delhi.

✓ Copy to: Dr. Subramanian Swamy, President, Janata Party, A-77,
Nizamuddin (East), New Delhi-110013.


(Arun Shourie)



सत्यमेव जयते

Dr. No. 9455/PM/PA/2001

219

(32)

वित्त मंत्री

भारत

नई दिल्ली-110001

FINANCE MINISTER

INDIA

NEW DELHI-110001

26 JUN 2001

Dear Dr. Swamy,

Thank you for your letter dated 16th June, 2001 regarding the bank account and security purchases by a firm controlled by Rahul Gandhi, son of Ms. Sonia Gandhi, the Leader of the Opposition in Lok Sabha.

With regards,

Yours sincerely,

(YASHWANT SINHA)

Dr. Subramanian Swamy,
President, Janata Party,
A-77, Nizamuddin (East),
NEW DELHI.



सत्यमेव जयते

वसुन्धरा राजे
VASUNDHARA RAJE

No. 176/VIP/MOS/01/220
Dated

राज्य मंत्री (स्वतंत्र प्रभार)
लघु उद्योग और कृषि एवं ग्रामीण उद्योग मंत्रालय
भारत

MINISTER OF STATE (INDEPENDENT CHARGE)
MINISTRY OF SMALL SCALE INDUSTRIES
AND AGRO AND RURAL INDUSTRIES
INDIA

13th March 2001

Dear Shri Swamy

I am in receipt of your letter dated March 3, 2001. I have forwarded it, for appropriate action, to the concerned agency.

With regards,

Yours sincerely,

(VASUNDHARA RAJE)

Shri Subramaniam Swamy
President, Janata Party
New Delhi

Dr. Subramanian Swamy Ph.D. (Harvard)
President, Janata Party (1989 -)

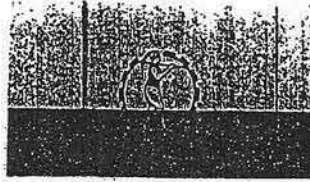
Minister for Commerce, Law & Justice (1990-91)

Chairman (with Cabinet rank)

Commission on Labour Standards (1994-96)

Professor of Economics: IIT Delhi (1969-91) &

Faculty of Economics, Harvard (1963-9; 1985-6; 2000-2)



JANATA PARTY

A-77, Nizamuddin (East) New Delhi - 110 013

Phone : 4353805 Fax : 4357388

Mobile : 9810194279

Website : www.janata.org

E-mail : swamy@post.harvard.edu

**Director,
Central Bureau of Investigation,
CGO Complex, Lodi Road,
New Delhi.**

Dear Sir,

1. You are aware that the then Minister-in-charge of Personnel, Ms. Vasundara Raje had forwarded to you my written complaint sent to her in my letter dated March 3, 2001 (containing information on offences committed by Ms. Sonia Gandhi, MP and her son Mr. Rahul Gandhi) for further appropriate action. You had been quoted in the Indian Express dated 1-1-4-01 as having received the said complaint and were further quoted in the said newspaper as stating that the CBI was comprehensively looking into the complaint to decide further action.

2. Thereafter, since I had not heard from the Minister or from you, I had in December, 2001 filed two Public Interest Litigation petitions in the Delhi High Court (numbered CWP 7527 of 2001 and CWP 7529 of 2001). Therein, Notice was issued by the Hon'ble Court to the CBI. Since then, the CBI have filed a number of Counter Affidavits/Status Reports under Court direction.

3. In Counter affidavits/Status Report filed on 5.3.2003, the CBI had placed on record that -

- (i) In the matter of antique smuggling to Italy (CWP No.7527 of 2001), the Indian Embassy informed that the request for information re the offences complained of by me, should be made to Italian authorities on my complaint of offences by the Indian Judicial Authority. The CBI acknowledged that it may not be feasible to send a Letter Rogatory to the Italian Judicial Authority without registering a criminal case (i.e. without a FIR).

(ii) In the matter of receiving funds from KGB to finance elections in India and for other illegal purposes (CWP No.7529 of 2001), the CBI Counter Affidavit/Status Report stated that in the absence of any criminal case registered (i.e., a FIR), it may not be possible to send a Letter Rogatory to the Russian Judicial Authority for investigation.

4. A PIL is non-adversarial, and is intended for enforcing the performance of statutory duties of investigating agencies and to overcome political obstruction of the same. It is in this spirit that in continuation of my earlier complaint forwarded to you by the Minister-in-charge of the CBI (and the receipt of which you have acknowledged), I am writing this letter to assist you.

5. In this further communication (again by way of abundant caution) I urge the CBI to investigate the disclosed offences in the said complaint as per established procedure under the Cr.P.C., and relevant Supreme Court and Delhi High Court judgements cited below. This requires that first you register an FIR and then investigate the information of disclosed offences in the said complaint, (even if the information is not from an eye witness). As the CBI has itself pointed out in the counter affidavits filed in Court, this is a requirement before the Italian and Russian authorities would cooperate in the investigation.

6. To perform the statutory obligations under Section 154 of the Cr.P.C. and meet the mandatory requirement to register an FIR prior to investigating the disclosed information of offences, reference may be made to:

(1) 2001 Cri LJ 2587; Mohindro vs. State of Punjab

G.B.Pattanaik and B.N.Agrawal, JJ.

(2) 84 (2000) DLT 199(DB); Goel vs. NCR of Delhi

Anil Dev Singh and R.S.Sodhi, JJ.

7. The information provided by me in the said complaint sent to you, indicates the commission of offences under various criminal statutes. In my Petition filed in Court read with my additional Affidavits, at the very least, on the fact of it, the following offences are disclosed.

- (i) Receiving funds from a foreign intelligence agency (KGB) and using a part of the funds for financing elections. This information was made public by a member of an official Commission of Inquiry, Ms. Yevgenia Albats. In p.380 of her book titled: "The State Within a State: The KGB", the author quotes from official files and actually gives the number of the file that contains this information. She also confirmed to me that she has seen and read the said files. Her disclosures have also been confirmed by the Spokesperson of the KGB successor organization, the FIS, in the Russian Government. (These have been enclosed in my complaint sent to you).
- (ii) Hence as per this information the following cognizable offences have been committed:
 - (a) Section 4(2)(a) r/w 23 of Foreign Contribution Regulation Act.
 - (b) Section 9 r/w 10 of Prevention of Corruption Act (1988).
 - (c) Section 171C r/w 120B & 124A of the Indian Penal Code.

8. In CWP No.7527 of 2001 (containing a part of the complaint regarding antique smuggling), there is information as disclosed by two eye witnesses, that an offence was committed under Section 25 of the Antiquities and Art Treasures Act (1972). Although the offence itself may not be regarded as cognizable, it is still a criminal offence disclosed that

9. As the Madras High Court has held {(1972) Madras LW (Cri.) 11 at 20}, under the Delhi Special Police Establishment Act, any officer of rank of Sub Inspector and above in the CBI is an officer-in-charge of a police station, and can investigate offences committed outside Delhi also (AIR 1961 Delhi 330 at 346). Even non-cognizable offences can be investigated by the CBI {(1970) 2 Madras LJ 709 (D.B)}.

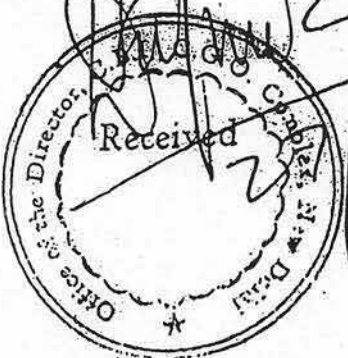
10. Hence based on the clear information given to you in my complaint and again in this letter, the CBI may register an FIR and conduct necessary inquiries and take appropriate action without further delay, so that the ends of justice may be served.

New Delhi

May 23, 2003.

(SUBRAMANIAN SWAMY)

O/C



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HAYZARDI 4

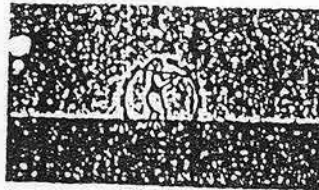
Dr. Subroonianian Swamy Ph.D. (Harvard)

President, Janata Party

Minister for Commerce, Law & Justice (1990-91)

Chairman (with Cabinet rank), Commission on Labour
Standards and International Trade (1994-96)

Member of Parliament (1974-99)



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Mobile : 9810194279

Website : www.janata.org

E-mail : swamy@ias.harvard.edu

Dear Vasundaraji:

March 20, 2001

I am in receipt of your reply dated March 12th instant, stating that the informal charge sheet against Ms. Sonia Gandhi submitted by me has been forwarded for action to the concerned agencies. Since my letter of March 2nd had disclosed several offences committed, it is obligatory for the agencies to register a FIR before launching a preliminary enquiry.

As regards my charge of commissions received by Ms. Sonia Gandhi's family on Indo-Soviet trade arranged by the KGB, and a part of which was used to finance the elections of select candidates of the Congress Party in the General Elections, I wish to inform you that the KGB Chief Viktor Chebrikov's letter seeking ratification and further authorization for the same from the the Central Committee of the Communist Party of the Soviet Union, has been published in Izvestia by Yevgenia Albats [not Eugenia Alhats], and the author has confirmed its existence by e-mail to my Harvard address. Incidentally, Harvard University has now taken possession of most of the KGB archives.

Sources which have never gone wrong in the past have now informed me that Ms. Sonia Gandhi's mother had been a member of the Italian fascist party founded by the Il Duce Benito Mussolini, and in the heydays of Hitler-Mussolini-Stalin axis, had developed contacts with the Soviet Union. That is why he had christened all his three daughters with Russian names.

But even more shocking is the information that Ms. Paola Maino, Sonia's mother, had developed contacts since 1984 through a pro-Soviet extremist Palestine group led by Habash [PFLP ?] with the LTTE, and that contact continues to flourish even today i.e., even after the Supreme Court has held the LTTE responsible for the assassination of Rajiv Gandhi. This may explain why Ms. Sonia Gandhi has chosen to betray the memory of Rajiv Gandhi by associating with LTTE stooge organizations such as the secessionist Dravida Kazhagam and PMK, which outfits even today adulate the human bomber and LTTE black tigress Dhanu who blew up Rajiv Gandhi in Sriperambudur. These two stooge organizations had character assassinated Rajiv Gandhi first on the alleged IPKF atrocities to create the environment for the LTTE cadres to be ready to commit suicide for avenging these atrocities. The sentenced-to-hang Nalini has stated so in the trial court, and it is this Nalini for whom Ms. Sonia Gandhi for some - as - yet mysterious reason, has written to the President of India to seek mercy!

■ PM to his Cabinet: let's implement CMP without 'undue financial drain'

Sonia can call for Govt files: Law Minister

ANITA SALUJA &
NAVIKA KUMAR
NEW DELHI, JUNE 8

UNION Law Minister H R Bharadwaj today said that Congress president Sonia Gandhi can call for any Government file because, as UPA chairperson, she has been accorded Cabinet rank status.

The Law Minister told *The Indian Express* that the real purpose of conferring her with Cabinet rank status was to ensure no one objects to her accessing files.

As UPA chairperson, Sonia was responsible for coordinating with allies and ensuring implementation of the CMP, Bharadwaj said.

"If the Left parties or any of the allies are dissatisfied over implementation of the CMP, she can ask for files relating to that particular Ministry," he said.

The Law Minister maintained that there were no



No two power centres: HRB

two power centres. While Manmohan Singh would run the Government, he said Sonia Gandhi would discharge the overall responsibility of running the coalition as UPA chairperson.

"It is she who brought the party to power and is the only unifying force in the party," he said.

Bharadwaj's remarks came on the day all Cabinet ministers received letters from Prime Minister Manmohan Singh, urging his colleagues to follow the National Common Minimum Programme (NCMP) as the Bible for governance.

"This will be the bedrock of the agenda for the government... the highest

CONTINUED ON PAGE 2

Sonia has power to call for any Govt file: Law minister

priority would need to be assigned to the formulation of programmes and schemes in accordance with the NCMP and to their implementation," the PM wrote.

"We have to work in a realistic manner as a team... I will need your support and guidance in the Cabinet to ensure that essential objectives of the NCMP are fulfilled..."

In a separate letter to all his Cabinet colleagues, the PM asked them to formally call on Lok Sabha Speaker Somnath Chatterjee and Vice-President Bhairon Singh Shekhawat.

He has asked ministers to identify "core areas" in the NCMP relating to each ministry and to submit a report on how each ministry would like to execute its plans.

Singh has also directed ministries to evaluate the availability of financial resources, which would help implement the NCMP. The letter carries a note of caution — "fulfilling of objectives of the NCMP will have to be done without leading to undue financial drain on our resources."

Asking each ministry to frame an institutional set-up for "strict monitoring" of the programme, Singh noted: "Every effort needs to be made to fulfill the promises embedded in NCMP in a timebound, transparent and sincere manner."

-2-


Ms. Maino had met LTTE ideologue Balasingham, according to these sources, at Ritz Hotel in Paris. If true, the French Intelligence are bound to have records. Moreover, now the British have outlawed the LTTE and have closed the International Secretariat of the LTTE, they should be asked to send a copy of the banking transaction of the LTTE through UK based banks. In 1991, shortly after Rajiv Gandhi's assassination, the LTTE had purchased properties in London and which transactions should now be traced through the bank accounts. The CBI led MDMA was set up, inter alia, for such purposes. I have been also trying to get these materials since 1994, but because LTTE was legal in the UK then, I could not beat the banking secrecy laws. I believe that Ms. Maino's business associate from the 1970s, Ottavio Quattrochi had arranged to pay the LTTE about \$ 7.5 million once in 1990 for, may be, services such as as smuggling out antiques from India, or even for purposes too horrendous for me to put in writing as yet. Quattrochi's arms brokering for the LTTE is however no more a secret in Malaysia But it is undeniable that the main material beneficiary from Rajiv Gandhi's assassination is the Maino family even if for the moment it is assumed that they lost emotionally. What is to be investigated is whether this material gain was windfall or something else.

Ms. Sonia Gandhi may have dumped the cause of vindication of Rajiv Gandhi's murder as no more useful to her. She has stopped talking about her "vedna" in the delay in catching the killers of her husband, in retrospect obviously expressed to embarrass Narasimha Rao and to manipulate the Jain Commission to exonerate the LTTE, but the nation must regard the assassination as a crime against India, and to the very end pursued with the vigour much as the US pursued the bombers of the Panam jet, which had come crashing down in Lockerbie, Scotland.

That is, if the KGB angle and the LTTE association is established, then Ms. Sonia Gandhi can be considered a plant in the country to destabilize the nation.

Best Regards,

Your Sincerely



Subramanian Swamy

Ms. Vasundara Raje
Minister of State in charge of Personnel
Government of India, New Delhi

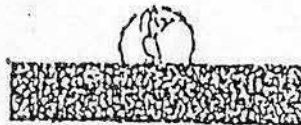
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Mobile : 9810194279
Website : www.janata.org
E-mail : swamy@fas.harvard.edu

Ms. Vasundara Raje
Minister of State in charge of Personnel
3, Suneribagh Road
New Delhi-110001

March 31, 2001

Dear Vasundara:

Following my earlier letters to you and your reply dated March 12, 2001 stating that my complaints of criminal offences committed by Ms. Sonia Gandhi and her Italian family had been sent to the agencies for enquiry. What needs to be done as required under Supreme Court judgements is that the CBI register a FIR and carry out proper and procedurally correct investigation. Any lethargy on behalf of the CBI would invite a High Court monitoring of the investigation.

More information is coming in about some of the charges I had made in the suggested charge sheet. In connection with the charge that the Mainos, i.e., Ms. Gandhi Italian family, had received commissions on Indo-Soviet trade deals arranged by the KGB and part of which was then spent by the Mainos to finance select Congress Party candidates in the elections, I have now located where the letter of the then KGB Chief Viktor Chebrikov addressed to the Central Committee of the Communist Party of the Soviet Union (CPSU) can be accessed. The letter is a part of the KGB Archives which are available for perusal by any government. This particular letter is referenced in the KGB Archives as F.5, OP. 6, POR. No. 12, D. 131 T.1, L.T.103-4.

Harvard University has a large collection of the KGB Archives. Since at present I hold a faculty position at Harvard I can assist the CBI get a true copy of the said letter provided a formal request comes from you.

Some parts of the said letter have already appeared in a book written by the well known Russian journalist Ms. Yevgenia Albats whose excellent book on the KGB has now been translated into English and

published under the title The KGB: The State within a State, published by Farrar, Straus and Giroux, New York and can be ordered online through amazon.com. On page 223 of this book, it is not only confirmed that that such a letter of Chebrikov exists containing the aforesaid content, but what is more grave is that portion of Chebrikov's letter which states blandly that the "KGB maintains contact with R.Gandhi, the son of Prime Minister Rajiv Gandhi...", and goes to add an even more damaging revelation of Chebrikov that "R.Gandhi expresses deep gratitude for benefits accruing to the Prime Minister's family from commercial dealings of Indian firm he controls in cooperation with Soviet foreign trade organizations. R.Gandhi reports confidentially that a substantial portion of the funds obtained through this channel are used to support the party of R.Gandhi"

Interestingly, during this period[1986-91] Rahul Gandhi was a student at Harvard University[he failed to complete the course, so no degree]. But it is a practice of Intelligence agencies to compromise children of those in high office especially of those countries with a dynastic tradition and nepotism. At Harvard, Rahul would have been easily accessible, and depending on his habits, as vulnerable.

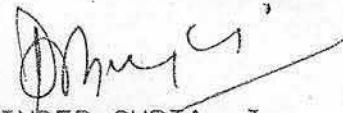

The upshot this letter is that Rahul Gandhi was the KGB conduit for the Mainos and functioned as their Agent of Influence, and is tantamount to making the Mainos traitors in the eyes of patriotic Indians. What else the Mainos are hiding from the Indian people, at the moment God only knows. In this context it is important to investigate Ms.Sonia Gandhi's past especially the hidden years of 1963-68 when she was in England and prior to her marriage with Rajiv Gandhi. She has bluffed Parliament in the Who's Who wherein she states[p.291] that she was educated in Cambridge University. Actually she had gone to the town of Cambridge to learn English in a teaching shop which was preyed on by Intelligence agencies of many countries. Ms.Sonia Gandhi is Leader of the Opposition in the Lok Sabha, and the nation has no clue about who she really is.

The nation thus has no time to waste. I hope you will not.



Best Regards



Yours Sincerely



Sr. No.	Date	Orders
%	12.12.2001	<p>Present : Petitioner in person. Mr. K.K. Sood, ASG wit Mr. Jayant Bhushan and Mr. Neeraj Jain for respondents 1 to 2. Mr. A.K. Dutta for respondent No.3.</p>
+	<u>C.W.No.7527/2001</u>	<p>Notice to respondents 1 to 3 at this stage, limited only on the question as regards status of the information alleged to have been supplied by the petitioner to respondents 1 to 3 as referred to in his petition.</p>
*		<p>Notice on behalf of respondents 1 to 2 is accepted by Mr. Jayant Bhushan, Advocate.</p>
		<p>Notice on behalf of respondent No.3 is accepted by Mr. A.K. Dutt, advocate.</p>
		<p>List on 30th January, 2002.</p>
		<p>Let copy of this order be given dasti to counsel for the parties on usual terms.</p>
		<p> DEVINDER GUPTA, J.</p>
	<p>December 12, 2001 mb</p>	<p> SANJAY KISHAN KAUL, J.</p>

Sr. No.	Date	Orders
*	02-04-2002	<p>Present: Petitioner present in person. Mr.K.K.Sud,ASG with Mr.Jayant Bhushan for UOI. Mr.A.K.Dutt for CBI.</p>
*	<u>CW 7527/2001.</u>	<p>On 12th December, 2001 notice of this petition was issued to respondents 1 to 3 limited only to the question as regards status of the information alleged to have been supplied by the petitioner to respondents 1 to 3, as referred to in the petition. Status report was not filed on behalf of respondents 1 to 3. Further time was sought which was granted by way of last opportunity on 18.2.2002. Again, today there is request for an adjournment to enable respondents 1 and 2 to place on record their reply.</p> <p>Parawise comments have been filed by respondent No.3. Learned counsel for respondent No.3 states that he has received response to the parawise comments. The Petitioner to ensure that the same is brought on record. Respondent No.3 states, that he will have further instructions on what is stated in the parawise comments by the petitioner.</p> <p>Though last opportunity was allowed to</p>
*		

Sr. No.	Date	Orders
		<p data-bbox="402 376 1360 969">respondents 1 and 2 on 18.2.2002 to file reply on the limited question as contained in order 12.12.2001, in the interest of justice We will grant one more indulgence to respondents 1 and 2 and will now call upon respondents 1 and 2 to place on record its version in detail of what the petitioner has stated in the petition. We make it clear that on the next date if reply is not filed, we will have to proceed on the basis of averments made in the petition.</p> <p data-bbox="589 1003 1019 1037">List on 21st May, 2002.</p> <p data-bbox="394 1070 1344 1216">Copy of this order be given DASTI on usual charges to learned counsel for the respondents.</p> <div data-bbox="954 1216 1369 1350"> Devinder Gupta, J.</div> <div data-bbox="954 1350 1239 1462"> S. Mukerjee, J.</div> <p data-bbox="389 1406 662 1462">April 02, 2002 KV</p> <p data-bbox="503 1529 1011 1597">- R-1. Counter filed.</p>

Sr. No.	Date	Orders
%	21-05-2002	<p>Present: Petitioner present in person. Mr. Jayant Bhushan for respondent No.1 and 2. Mr. A.K. Dutt for respondent No.3.</p>
+ *	<u>CW 7527/2001.</u>	<p>Counter affidavit has been filed on behalf of respondent No.1. Petitioner states that the affidavit does not deal with the vital aspects as highlighted by him in the petition. Not even a slightest effort has been made by the respondent to know about the ownership of the commercial establishments, which could have been ascertained by making inquiry from the concerned authorities, petitioner states that he will place on record a tabulated statement as regards the aspects on which respondents have not addressed themselves.</p> <p>In the meanwhile, respondent No.3 will ensure that further enquiry, if necessary, even by sending letter to the Embassy, will be done.</p> <p>List on 27th August, 2002.</p>
	May 21, 2002 KV	<p> Devinder Gupta, J.</p> <p> S. Mukerjee, J.</p> <p><i>Tabulated statement not filed</i></p>

NAC pulls up tribal affairs ministry

OUR POLITICAL BUREAU
NEW DELHI

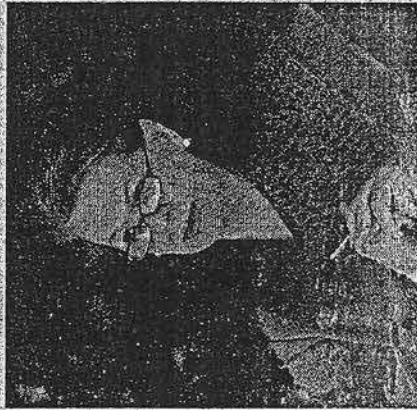
THE Sonia Gandhi-led National Advisory Council (NAC) has said some difficulties in implementation has meant that the landmark Forest Rights Act has been unable to duly achieve its aim of undoing the 'historical injustice done to tribals and other forest dwellers'.

The Council has pulled up the tribal affairs ministry, which is the nodal agency for the forest rights law, to exercise its powers under the Act and issue instructions to all states, in the form of operational guidelines, to plug the loopholes. At its meeting on Saturday, the NAC suggested a series of interventions that the tribal ministry should undertake to ensure better implementation. Stressing that the Act was robust, the Council has recommended some small amendments to the rules. Clearly, the

NAC is of the view that a proactive effort by the tribal affairs ministry is necessary. The Council has suggested elements of the operational guidelines that the ministry should issue.

The first recommended intervention is to make it clear that the gram sabha has to be called at level of the actual compact settlement. It has suggested that the procedure of enlisting villages and the manner in which to conduct gram sabhas be provided by the ministry.

Under the Act, inquiry and verification of claims are to be done through the gram sabhas or village assemblies. These assemblies have to be constituted at the level of the village or community. However, in practice, the gram sabhas are held at the panchayat level, which often cover villages over a wider area and do not correspond to actual communities. As these gram sabhas lack in local knowledge of actual pos-



sion and use, the exercise of inquiry and verification ceases to have any real meaning.

The operational guidelines need to ensure that the process in investigating claims is both transparent and participatory. The second intervention has to ensure that officials also entertain non-

documentary evidence while investigating claims. The law allows the use of diverse forms of evidence as official records may not accurately record the claims of tribal people. Only entertaining documentary evidence is seen as one reason for the high rejection rates of claims.

In spite of the fact that the Forest Rights Act recognises the legal right of communities to conserve and manage forests, the Council is of the view that specific procedures to claim and recognise community forest resource rights would help communities to access these rights and enjoy them meaningfully. In an endorsement of the environment ministry's August 2009 circular, the NAC has stressed that the proposed guidelines must 'explicitly bar eviction, forced relocation or diversion of forest land in violation of people's rights, or where the gram sabha has not certified the process to be complete.'

PIONEER SEPT 24, 2003

Bofors used Quattrocchi's proximity with Rajiv Gandhi to clinch deal: CBI

Staff Reporter

New Delhi

THE DELHI High Court, while hearing the arguments in the Bofors case was told by the Central Bureau of Investigation (CBI) that Swedish arms manufacturer A B Bofors used Italian businessman Ottavio Quattrocchi's proximity with former Prime Minister Rajiv Gandhi to clinch the deal.

Bofors entered into an agreement with Quattrocchi's A E Services in November 1985 in which he had promised to secure the deal for the company by March 31, 1986 in lieu of three per cent commission on payments to be

made by the Indian Government, said Additional Solicitor General Mukul Rohatagi. Justice J D Kapoor is hearing appeals filed by accused Hinduja brothers, Srichand, Gopichand and Prakashchand and Bofors challenging the November 2002 order of Special Judge Prem Kumar framing charges against them in the case.

Citing the statements of Gandhi's Cabinet colleagues V P Singh, Arun Nehru and that of R Ganapathi, who was a member of the price negotiating committee for the procurement of 155mm guns, Rohatagi submitted that Quattrocchi was "very close"

to Gandhi and his family.

He showed certain documents to the court according to which an amount of 7.34 million dollar was remitted to the account of Quattrocchi's in September 1986. Within five days the money was further transferred to another account from where 7 million dollar was withdrawn by the accused, said the ASG.

Quattrocchi's trial has been separated from the main trial as the CBI failed to secure his presence. However, the ASG discussed his role in the alleged conspiracy in order to "expose" the role of public servants and some private persons who connived with Bofors.

National / Interviews

INTERVIEW

"The Bofors Papers All Point To The Gandhi Family"

The chief of the investigation division of the Swedish National Bureau of Investigation (NBI) says Sonia cannot claim innocence in the face of findings conducted in the payoffs during the last decade or so.

RANJIT BHUSHAN

Sten Lindstrom is chief of the investigation division of the Swedish National Bureau of Investigation (NBI). In 1987-88, as special prosecutor appointed by the Swedish government to probe alleged wrongdoing on the part of main collaborators in Sweden, Lindstrom personally headed the most wide-ranging probe into the Bofors payoffs. Within a few months of beginning the probe, Lindstrom realised he was not going to get any assistance from the Indian authorities and even some top officials of AB Bofors. Now head of the NBI, he has a deep understanding of all the crucial links in the Bofors story. Lindstrom has scrutinised hundreds of documents and papers and has interviewed all those concerned with the deal. Last month, he created a storm by saying that Sonia Gandhi should tell people all that she knows about Bofors. In a telephonic interview from Stockholm to Ranjit Bhushan, Lindstrom said Sonia cannot claim innocence in the face of findings conducted in the payoffs during the last decade or so. Excerpts:

You have been associated with the Bofors probe during the last decade. How has it progressed?

Well, investigations at the Swedish end are now closed. We have a law which does not permit investigation and prosecution beyond a period of three years. It's a closed case for us, until something really new emerges in which we are required to assist.

What was the role played by the Gandhi family?

Until more details are available, it is difficult to say. But the Gandhis, particularly now Sonia, should explain how Quattrocchi-owned companies got such fat sums as payoffs from the Bofors deal. After all, what is the connection of Sonia and the Gandhi family to Quattrocchi? Who introduced Quattrocchi and his AE Services to Bofors? At least one thing is certainly known now. A part of the payoffs definitely went to Quattrocchi. That is now the legal position and, should governments show interest, a formal case can now be lodged.

What then is the key to the whole Bofors issue?

Clearly, the bank papers scheduled to arrive from Switzerland to India could hold the key. I think a great deal now depends upon what the next set of papers from Switzerland might say. The key to the Bofors deal perhaps lies in those papers. Just as the first set of papers proved the culpability of some close Gandhi family and friends, the second and final set could have new names and angles. Already there is a great deal of speculation about the appellants in the case.

The Indian authorities have so far been unable to make any headway with the Swiss since the first set of papers arrived early last year. Why?

Part of the reason perhaps is the fact that your investigators are not trying hard enough. I know it is difficult, because the kind of appellants blocking the transfer of papers to India are very big. They have a vested interest in seeing that the papers do not reach your country. I would think the best way out of it would be to put adequate pressure on the authorities there. At one level, I think more pressure needs to be applied if the Indian government is serious about getting to the bottom of the case.

What are the kind of papers you have in your possession? And do they throw any light on the recipients of the payoffs?

There is some circumstantial evidence. It is a long story. I cannot explain it away in a hurry. All I can say is that the papers all pointed to the Gandhi family. A good way of getting to the truth is if Sonia lays down her cards on the table. By the looks of it, it seems difficult that such a thing would happen.

There is a great deal of excitement about Bofors in India and the issue is still capable of bringing down a government or two.

I know that. Bofors remains a hot potato in India. But someone will have to move fast if the truth is to be unearthed. All independent investigations on the issue—including some of the greatest media exposes—have come about. But the task of prosecuting, after the investigations are over, must surely lie with the government of the day.

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COMMENT

Is Sonia Above Questioning?

If the BJP is serious about fighting corruption there is no dearth of issues. Take the case of 'payments in US dollars to the family members of Mr. Rajiv Gandhi, namely Sonia Gandhi, Rahul Gandhi and Ms Paola Maino, mother of Sonia Gandhi'

RAJINDER PURI

The BJP has taken up the secret Indian Swiss bank money issue. Does it seriously contemplate recovering the money? Or is it just a poll gimmick? Recall the party's somersault on the Indo-US Nuclear-Deal. If the deal destroys national security, why have Arun Shourie and Yashwant Sinha not resigned? Are they political opportunists? Do they or don't they really intend to deliver results on the Swiss money? If the BJP is serious about fighting corruption there is no dearth of issues. Take one glaring example.

On August 15, 2006 this scribe wrote: "Dr. Yevgeniya Albats is a Soviet journalist who ... was appointed as member of the official KGB Commission set up by President Yeltsin in 1991. She had full access to secret files of the KGB. She authored a book, *The State within a State: KGB and Its Hold on Russia* Dr. Albats disclosed in her book that KGB chief Victor Chebrikov in December 1985 had sought in writing from the Central Committee of the Communist Party of the Soviet Union (CPSU), 'authorization to make payments in US dollars to the family members of Mr. Rajiv Gandhi, namely Sonia Gandhi, Rahul Gandhi and Ms Paola Maino, mother of Sonia Gandhi.' CPSU payments were authorized by a resolution, CPSU/CC/No 11228/3 dated 20/12/1985; and endorsed by the USSR Council of Ministers in Directive No. 2633/Rs dated 20/12/1985. These payments had been coming since 1971, as payments received by Sonia Gandhi's family, and 'have been audited in CPSU/CC resolution No. 11187/22 OP dated 10/12/1984.'

"In 1992 the media confronted the Russian government with the Albats disclosure. The Russian government confirmed the veracity of the disclosure and defended it as necessary for 'Soviet ideological interest'. The *Hindu* of July 4, 1992 carried this report.... In November 1991 the respected Swiss magazine, *Schweitzer Illustrate*, published a report alleging that Rajiv Gandhi had 2.5 billion Swiss francs, equivalent roughly to two billion US dollars, in numbered Swiss bank accounts.... Surely, Mrs. Sonia Gandhi owes herself and the nation an emphatic and effective rebuttal of the Albats charges?"

On November 8 2006 I again wrote: "... Until now there has been only deafening silence from Mrs. Gandhi and the Congress party.... If the Albats allegation published in a reputed research book is false, Mrs. Sonia Gandhi should promptly deny it. Otherwise, her silence could be perceived as assent."

The government remained silent. But so did all the opposition parties! Why? Are the opposition leaders themselves also vulnerable and compelled to maintain discreet silence? Draw your own conclusions.



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Courtesy: Headlines Today

'Quattrocchi had free access to Gandhis'

Harinder Baweja | New Delhi, January 5, 2011 | 21:15

Soon after *Headlines Today* broke the story on the Income Tax Appellate Tribunal order nailing Italian businessman Ottavio Quattrocchi, Law Minister Veerappa Moily claimed that the Bofors scam accused did not have deep or personal ties with the Gandhi family.



File photo of Ottavio Quattrocchi.

However, *Headlines Today* has in its exclusive possession the testimony of SPG officer Naresh Chandra Gosain made before the CBI in the Bofors case, which lays out in great detail the relationship between the Gandhis and Ottavio Quattrocchi.

Headlines Today has also accessed the testimony of Ottavio Quattrocchi's personal driver Sasi Dharan. In his deposition, Sasi Dharan talks about multiple meetings between Quattrocchi and the Gandhis.

These meetings continued right up to May 1993, till just before Ottavio Quattrocchi fled India for good. These testimonies are being brought out into the public domain for the first time.

The depositions of the SPG officer, who was in the escort detail of then Prime Minister Rajiv Gandhi and was the Personal Security Officer of Sonia Gandhi, and Quattrocchi's personal driver, have been revealed for the first time.

SPG OFFICER'S TESTIMONY

Headlines Today is in possession of the written statement of then Intelligence Bureau officer Naresh Chandra Gosain made before CBI Inspector Ghan Shyam Rai on March 29 1997. Between 1984 and 1987, Gosain was posted in the Special Protection Group of then Prime Minister Rajiv Gandhi. He was part of the escort team. Between 1987 and 1989, Gosain served as the Personal Security Officer or the PSO of Sonia Gandhi.

During Deve Gowda's prime ministership in 1997, Gosain deposed before the CBI. This deposition has so far never been made public.

Headlines Today dug out this deposition, in which Gosain talks at length about the close family ties between the Gandhis and the Quattrocchis.

In his testimony Gosain says, "Mr Ottavio Quattrocchi and his wife Ms Maria Quattrocchi were very close to Mr Rajiv Gandhi and Mrs Sonia Gandhi. When Shri Rajiv Gandhi became Prime Minister, Mr Quattrocchi and his family members used to visit PM house and the family members of Shri Rajiv Gandhi also used to visit the house of Mr Quattrocchi."

"In the initial period of Prime Ministership of Shri Rajiv Gandhi, the children of Shri Rajiv Gandhi used to stay at Mr Quattrocchi's house during the foreign visits/domestic visits of the Prime Minister. We used to perform our shift duties at the residence of Mr Quattrocchi on such occasions. Sometimes, Mrs Sonia Gandhi has also stayed in the house of Mr Quattrocchi and at that time we used to perform our duties there."

Gosain goes on to add that Ottavio Quattrocchi and his wife Maria enjoyed free access to the Prime Minister's house. 'At No. 5 & 7 Race Course Road, private cars were not allowed to enter inside the bungalow. Only the ferry cars of SPG, after severe security checks, used to carry such visitors from reception to porch and back. Mr Quattrocchi and Mrs Maria Quattrocchi were very close to Shri Rajiv Gandhi's family and they got free access to the PM's House.'

"All visitors to No 5 & 7 Race Course Road were issued passes at the reception near the alighting point. Every time, a card was kept ready for Mr. Quattrocchi and his family members as and when they visited the PM's house. Everybody in SPG posted at PM house knew Mr Quattrocchi and his family members. Hence, there was no question of identifying them."

DRIVER'S TESTIMONY

Italian businessman Ottavio Quattrocchi's proximity to the Gandhis is well known. What is not known, however, is whether this proximity continued even after Quattrocchi began to be linked to the Bofors scandal.

The testimony of Sasi Dharan is crucial in unravelling this mystery. Sasi Dharan worked as a driver in Snam Progetti. Snam Progetti was an Italian public sector giant that was represented in India by Ottavio Quattrocchi.

Sasi was Quattrocchi's personal driver. He drove Mercedes No. DIA 6253. In his testimony before the CBI, Sasi details the frequent meetings between the Gandhis with the Quattrocchis.

In his testimony Sasi says: "Shri Quattrocchi and Mrs Maria Quattrocchi were very close to Shri Rajiv Gandhi, Sonia Gandhi and his family. I do not know what type of relation they had but Quattrocchi and his wife Maria used to frequently visit the house of Rajiv Gandhi and Sonia Gandhi. I knew it since 1985 when I joined service. At that time they used to visit the house of Rajiv Gandhi twice or thrice in a day. Whenever Sonia Gandhi's mother or father visited India, I used to drive them to the house of Quattrocchi. They used to remain there for the whole day and Mrs Maria Quattrocchi would take them for shopping. They used to come to India four or five times in the year."

What is most damaging is the car log maintained by driver Sasi Dharan. In this log, Sasi details the exact dates when Ottavio Quattrocchi came to meet Rajiv and Sonia Gandhi at 5 and 7 Race Course Road or 10 Janpath. These logs are for the period 1989 to 1993. In this log book, Sasi Dharan has mentioned 41 occasions when Quattrocchi came to meet the Gandhis.

It is important to note that the meetings between Ottavio Quattrocchi and Sonia Gandhi continued even after the death of Rajiv Gandhi in 1991.

According to Sasi Dharan, Quattrocchi came to 10 Janpath 21 times after May 1991.

It is important to recollect that by January 25, 1990, a team of CBI officials was already in Switzerland with a list of suspected recipients of the Bofors payback. According to a *Frontline* magazine story of the time, Ottavio Quattrocchi was the first name on that list. Between 1988 and 1990, the media too carried many stories about the involvement of Ottavio Quattrocchi as a middleman in the Bofors deal.

What these documents show is that despite the cloud of suspicion surrounding Quattrocchi's involvement in the Bofors paybacks, he continued to have unfettered access to 10 Janpath.

Describing his former boss, Sasi says: "Mr. Quattrocchi used to be a secretive man. He never used to speak much to others about himself. Whenever some news report came up in the paper about the case, Quattrocchi used to be very upset. He would not be his normal self. His mood would be bad"

Sasi concludes by saying: "Shri Quattrocchi left India on the night of July 29, 1993 and on this day also I had driven him to the airport. At that time he did not have any luggage except one briefcase and he told me he was going for an urgent meeting. Usually, whenever Mr Quattrocchi wanted the car, he would tell me in advance, but the day he left, he did not tell me (in advance)"

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Subramanian Swamy <swamy39@gmail.com>

Need to go into role of Sonia Gandhi in decision-making : B. Raman

1 message

S. Kalyanaraman <kalyan97@gmail.com>

6 March 2011 09:43

Bcc: swamy39@gmail.com

Congratulations to B. Raman who is putting it softly but with enormous force.

SoniaG has been instrumental in subverting the Constitution, making chamcha-s of every single institution of the Constitution, starting with the judiciary and ending with the Enforcement Directorate or CVC. Just note the impunity with which SoniaG treats with disdain and doesn't even care to respond to the evidence presented in the media about the Swiss Bank account of enormous wealth of her late husband Rajiv Gandhi.

Following up on the global outrage of illicit wealth held by the likes of Mubarak and Gaddafi which led to the freezing of their illicit wealth by some financial institutions, President of India should take immediate action to issue an ordinance nationalising all the assets held abroad by Indians, and declare a Financial Emergency to constitute a National Government to manage the restituted nation's wealth for the benefit of the poor people of Bharat, that is India.

kalyan

Need to go into role of Sonia Gandhi in decision-making

B.Raman, March 3, 2011

former Add. Director, RAW, Cabinet Secretariat -

Sonia Gandhi can do no wrong.

2. That seems to be the basic assumption in the current debate on the various decisions of a very controversial nature made by the Government of Prime Minister Manmohan Singh since the present Government was formed after the elections of 2009----whether the decisions related to the questionable functioning of the Ministry of Telecommunications or the wrongful appointment to the high-pedestal post of the Chief Vigilance Commissioner of someone facing an enquiry into a charge, which could cast a shadow on his integrity if proved or other serious matters of public interest.

3. In all the debates in public---whether in the media or by political parties---- the focus has been on the role of the Prime Minister and other concerned Ministers as well as bureaucrats. I watched with interest the debate in the various TV channels this evening on the adverse judgement of a bench of the Supreme Court delivered earlier in the day in the case regarding the procedure followed for the appointment of Shri P.J.Thomas as the Chief Vigilance Commissioner.

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4. The eminent personalities, who participated in the debates, as well as the TV anchors focussed only on the role of the various personalities in the Government from the Prime Minister downwards. Not one of them mentioned even in passing the possible role of Sonia Gandhi as the leader of the Congress (I) in these controversial decisions. Even the spokespersons of the opposition parties, including the Bharatiya Janata Party (BJP), did not even mention her name in their interventions.

5. Does this mean that all these controversial decisions were taken only by the Government with the Congress (I) leadership playing no role in it? Any objective analyst would find it difficult to accept this. We have been under a peculiar system of governance since 2004 in which real power seems to be wielded by Sonia Gandhi in her capacity as the head of the Congress (I) with the Prime Minister as the head of the Government exercising only seeming power.

6. There has been an unseen, but unquestioned power which has been exercising a compulsive influence on decision-making in important matters. This compulsive influence is quite evident in the case of the appointment of the Chief Vigilance Commissioner. Whether in matters relating to his appointment despite his facing an incomplete enquiry or the defence of his appointment before the Supreme Court everyone from the Prime Minister downwards has been acting as if they were acting at the instance of an invisible force that could not be resisted. Such an invisible force could be only that of Mrs. Sonia Gandhi.

7. She has been conducting herself as a neutral, disinterested by-stander, who had nothing to do with any of these decisions. She has not spoken on any of these decisions in any great detail, nor has she been questioned. Everyone, including the media and even the opposition, has been behaving as if like the British monarch she is above and beyond all controversies and, hence, her role cannot be questioned.

8. If one has to find out the real truth behind the recent controversies it is as important to go into her role as it is to go into the role of others. The assumption that Sonia Gandhi can do no wrong has to be challenged by the public as well as the media and the political class. She must be made to face the fire of criticism and questioning like any other leader. She should no longer be treated as if she is a morally superior person whose good faith and integrity have to be implicitly accepted.

9. It is important for the Joint Parliamentary Committee (JPC) now being constituted to summon her and question her in detail on the various controversies. It is equally important for her role in decision-making to be debated in Parliament, in the media and elsewhere. She should herself welcome a greater public focus on her role and influence in decision-making. (3-3-11)

(The writer is Additional Secretary (retd), Cabinet Secretariat, Govt. of India, New Delhi, and, presently, Director, Institute For Topical Studies, Chennai. E-mail: seventyone2@gmail.com)

<http://ramanstrategicanalysis.blogspot.com/2011/03/need-to-go-into-role-of-sonia-gandhi-in.html>

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER AND
SHRI R. C SHARMA, ACCOUNTANT MEMBER

I.T.A.Nos.3088 to 3098 & 3107/Del/2005
Assessment Years : 1987-88 to 1993-94 &
1995-96 to 1999-2000.

Shri Hersh W. Chadha,
(Legal heir of Late Sh. W.N. Chadha), Vs. DDIT, Circle-1(1),
Gyan Vatika, Bijwasan Road, International Taxation,
Kapashera, New Delhi. New Delhi.
PAN/GIR No.: AAB-PS-8397-H

(Appellant)

(Respondent)

Appellant by : Shri Ajay Vohra, Sachit Jolly, Advocates.

Respondent by : Shri G.C. Srivastava, Advocate,
Special counsel

ORDER

PER R.P. TOLANI, JUDICIAL MEMBER.

This is a group of appeals filed by the assessee. The issues involved being common and the assessee being the same, all the appeals are disposed of by this common order, for the sake of convenience. The main grounds raised in the appeals for AY 1987-88 & 88-89 pertain to receipt of commission from M/s Bofors, a Swedish company, dealing in arms and ammunition, to the extent not disclosed by the assessee and in subsequent years, income from interest on this undisclosed commission. In all these years there are other additions on account of House Property income and

disallowance of business expenses. The figures are given in the respective assessment orders. They can be summarized as under:

A: Common ground for AYs 1987-88 and 1988-89 – Addition on account of commission:

1. That the CIT (A) erred on facts and in law in confirming the additions at Rs. 52,60,34,469/- and 85,31,425/- respectively made by the Assessing Officer on account of alleged commission received by the appellant through M/s. Svenska Incorporated Panama, alleged to be a front company of the appellant.

1.1. That the CIT (A) erred on facts and in law in not appreciating that the aforesaid addition was made by the assessing officer without bringing on record any evidence to substantiate the allegation that the appellant had received any commission from AB Bofors.

1.2. That the CIT (A) erred on facts and in law in relying upon SNAB and the letter written by Mr. Sven Rabmkergar and not appreciating that the report of National Audit Bureau of Sweden "SNAB", on the basis of which the aforesaid addition was made, was only a press report and, therefore, had no evidentiary value.

1.3. That the CIT (A) erred on facts and in law in upholding the addition made by the AO merely on conjectures and surmises without bringing on record any evidence that the amount was received by the assessee (and that the interest had accrued on such commission).

1.4. Without prejudice, that the CIT(A) erred in not appreciating that as per the undertaking given by the Government of India, the evidence from Switzerland had to be used only in case in which the Letters Rogatory was issued and could not be used for the purpose of income-tax proceedings.

B Interest on above commission income : Common for 1988-89 to 1999-2000:

The CIT (A) erred on facts and in law in confirming these additions on account of notional interest in respect of the above commission allegedly received by the appellant from M/s Bofors through M/s Svenska Inc., Panama.

C. House Property additions Common for all assessment years:

That the CIT (A) erred on facts and in law in upholding the action of the assessing officer in computing the income from house property at a higher figure.

That the CIT (A) erred on facts and in law in upholding the action of the assessing officer in taking the annual value of the property located at E-1, Placimo, Bombay at Rs.2,59,800 as against actual rent of Rs.31,200 received by the appellant during the year.”

D Business additions/ disallowances: (A.Y. 1987-88):-

i) That the CIT (A) erred on facts and in law in confirming the disallowance of salary amounting to Rs.16,000 and staff welfare expenses of Rs.10,917 incurred in respect of Mrs. Nandini Chadha, daughter-in-law of the appellant, on the ground that nexus between the expenditure incurred and the exigencies of business could not be established.

ii) That the CIT (A) erred on facts and in law in confirming the disallowance of salary amounting to Rs.35,350 and Rs.39,250 paid to Mr.H.W.Chadha (son of the appellant) and Mrs. K.W. Chadha (wife of the appellant), respectively, on the ground that the same were incurred for non-business purposes.

iii) That the CIT (A) erred on facts and in law in confirming the disallowance of Rs.43,200, being reimbursement of rent to Mr. H W Chadha and Mrs. K. W. Chadha, holding that the premises in respect of which the rent was paid, was being used for non-business purposes.

iv) That the CIT (A) erred on facts and in law in sustaining the disallowance of motor car running expenses at 1/6th of the expenditure by holding that element of personal user could not be ruled out.

v) That the CIT (A) erred on facts and in law in confirming the disallowance of expenditure of Rs.53,691 incurred by the appellant towards presents to delegates of foreign principals under section 37(2A) of the Act, holding the same to be entertainment expenditure.

vi) That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in disallowing short term capital loss of Rs.67,062 on sale of shares, by holding that the transaction of the sale of shares made to the wife of appellant was a sham transaction.

E: Levy of Interest u/s 234

2. The brief facts of the case are –

2.1 In 1987, a scam in purchase of defense equipments, known as the Bofors Scam was unearthed, indicating that in respect of the gun deal between M/s. Bofors, a Swedish company dealing in arms and ammunition and the Govt. of India illegal commission / kickbacks were paid by Bofors violating specific defense policies on which the deal was signed by the Govt. of India. This expose resulted in an uproar across the whole of India and led to the setting up of a Joint Parliamentary Committee (JPC) and investigations by CBI, FERA etc., including the Income Tax department.

2.2 The assessee was representing Bofors as their agent in India since long. The evidence collected during investigation by the income tax Authorities and other agencies reflected that the assessee, Mr. W. N. Chadha had received income in this Bofors gun deal more than what was disclosed in his returns of income. The Assessing Officer (AO), during the course of assessment proceedings, collected a lot of evidence, recorded the assessee's statement and made these additions along with other additions under the head House Property Income and made disallowance of business expenditure and other disallowances. The assessments were appealed against by the assessee. The CIT(A) confirmed the orders of the AO. Aggrieved, the present assessee has filed these second appeals. It is pertinent to mention that the then assessee expired after the framing of the assessments and is represented by his son/legal heir Shri Hersh Chadha.

FACTS ABOUT BOFORS CONTROVERSY

2.3 The Indian defense purchase policy, till 1984, allowed foreign bidders to have their Indian agents. However, they were required to furnish details of their Indian agents, if any, to the Government in a prescribed proforma. Subsequently, the Govt. of India in consultation with the Defense Department, made a uniform policy, prescribing that "agents were not to be allowed in Indian defense purchases. If any bidder had maintained one, the amount so payable to agent by the supplier, was to be reduced from the quoted deal. The revised policy was to ensure that the deal was on a principal to principal basis, to avoid undesirable consequences which may arise out of such arrangement to save the cost to the defense budget and thus to the public exchequer.

2.4 In respect of the impugned Bofors gun deal, at the relevant time, there were four bidding firms involved in the bidding of the gun deal, namely, M/s. Sofma (France), M/s. Bofors (Sweden), M/s. International Military Services(Britain). and M/s. Voest Alpine(Germany). These bidders had furnished the requisite information about their agents in India.

2.5. M/s. Bofors of Sweden also, in its declaration dated May 19, 1984, under the signature of Hans Ekblom, Vice President (Marketing), had informed that - W.N. Chadha of M/s. Anatronic General Corporation, C-4, Main Market, Vasant Vihar, New Delhi 110057, was their agent, and that, apart from W.N. Chadha, Hersh W. Chadha, Marketing Director of M/s. Anatronic General Corporation, Brig. B.B. Bhatnagar (retired) and Brig. A.L. Verma (retired) were designated:

- (a) to liaise with the Government of India for the contract;
- (b) to liaise with the Indian Authorities.

2.6 Consequent to the changed defense purchase policy, the Defense Department, asked M/s. Bofors on May 3, 1985, to dispense with the services of its declared agent and comply with such Indian Defense policy requirements. Bofors did not respond immediately and as late as on March 10, 1986 informed the Defense Secretary that, Bofors "do not have any Representative/Agent especially employed in India for this project". However, for administrative services, such as hotel bookings, transportation, forwarding of letters, telexes, etc., they were using a local firm, Anatronc General Corporation, C-4, Main Market, Vasant Vihar, New Delhi.

2.7. Be that as it may, on March 24, 1986, a contract number 6(9)/84/D(GS.IV), was entered into between the Govt. of India and M/s. Bofors, after approval by the then Prime Minister, who was also the Defense Minister, for supplying four hundred FH 77-B gun systems along with vehicles, ammunition and other accessories, at a total cost of SEK 8,410,660,984 [equivalent approximately to Rs.1437.72 crores (as per the exchange rate on March 21, 1986, 1 SEK = 1.7094 Rs. Without reducing any agent representation]. The aforesaid contract was signed by S.K. Bhatnagar for and on behalf of the Govt. of India and by Martin Ardbo, President Bofors and also by Anders G. Cariberg, president and Chief Executive Officer of Nobel Industries, for and on behalf of M/s. Bofors.

2.8 As per the terms of payments stipulated in this contract, 20% of the total amount of the contract (with the exclusion of any amount related to services) was to be paid by the buyer, i.e., Govt. of India, in advance, within 30 days from presentation by the seller, i.e. M/s. Bofors, of an advance payment guarantee. On receipt of the advance payment guarantee from Bofors on April 7, 1986, the advance payment of SEK 1,682,132,196.80

(Rs.296.15 crore), equivalent to 20% of the contract value was paid to M/s. Bofors on May 2, 1986.

2.9 From here the events took a turn. On 16-4-1987, i.e., over a year after the said contract was executed, when the advance money had been paid by the Govt. of India as per the terms of the contract and after delivery of the gun systems had started, a Radio Broadcasting channel "Dagens Eko" of the Swedish Radio, came out with a sensitive news. It unfolded that Bofors had violated the Swedish Law by managing to obtain this Gun Supply contract from the Govt. of India, amongst other things, due to the fact that local agents had been paid large amounts in "bribes".

2.10. It further stated that the agents had helped Bofors in getting the contract by dubious means with the help of local contacts and support within the -Indian Military Authorities, the Bureaucracy and concerned politicians. The illicit payments to the agents and others were said to have been made by transactions in secret bank accounts in Switzerland.

2.11. This news became a center of media & political attention in India also and was intensely reported everywhere, raising very sensitive issues of Indian Defense Policies, corruption, manipulations etc. The Govt. of India acted on these disturbing events, and on 21-4-1987, made a formal request to the Government of Sweden for an investigation into the allegations.

2.12. The Swedish Government accepted the request of the Govt. of India and ordered an enquiry by its organization, the Swedish National Audit Bureau (SNAB). The SNAB submitted its report to the Swedish Government on June 01, 1987, which was forwarded on June 04, 1987 to the Govt. of India. SNAB report, inter alia, made the following disclosures:-

“that an agreement exists between AB Bofors and -----
(omitted) concerning the settlement of commission
subsequently to the FH-77 deal, and;

that considerable amounts have been paid subsequently to,
among others, AB Bofors' previous agent in India”.

2.13. SNAB thus confirmed that these payments to the tune of SEK 170-250 million were indeed made by Bofors in connection with this Defense contract to its previous agent in India, but the names of the recipients were not mentioned.

2.14. Facts thus emerged from SNAB report that despite having full knowledge about the policy of the Govt. of India that there should not be any agent whatsoever in this deal, Bofors continued with its old agent. Further, the amount such commission instead of reducing from price was paid to agent and related parties. Bofors thus acted in violation of the Indian defense policies and rules and harmed the public exchequer, besides committing breach of propriety etc .

2.15. It emerged further that despite the Indian Govt's. insistence not to appoint or pay any agent, Bofors entered into a fresh consultancy agreement with M/s. AE Services Limited of U.K. on November 15, 1985 at the behest of one Mr. Ottavio Quattrocchi, an Italian. According to this agreement, M/s. AE Services was appointed as a consultant to M/s. Bofors for getting the award of the contract for 155 mm gun systems from the Govt. of India, to perform the following services:

- (a) to support Bofors in its bid for the contract according to instructions of Bofors;
- (b) to keep Bofors informed of the up-do-date situation and progress of negotiations

2.16. Bofors was to pay a fee equivalent to 3% of the total value of the contract pro rata with the receipt of the payments. As per its terms, the Agreement was to cease automatically on April 1, 1986, if by this date, the contract was not awarded by the Govt. of India to Bofors. Thus, M/s. A.E. Services were to get the fees only if the contract was awarded to Bofors by March 31, 1986 and the contract was, in fact, awarded a week before that date. It thus emerged that Bofors deliberately suppressed the fact of their aforesaid Agreement dated 15-11-1985 with M/s. AE Services in their letter dated 10-3-86, addressed to the Ministry of Defense, in terms of disclosure and reducing the cost of the deal as stipulated.

2.17. Investigations revealed that the said Mr. Quattrocchi had contacted Myles Tweedale Scott, Director of M/s. AE Services Limited, sometime before 7-8-1985, for the purpose of the said agreement and was instrumental in bringing about the said agreement between M/s. AE Services Limited and M/s. Bofors. Mr. Quattrocchi remained in India from 28-2-1965 to 29-7-1993, except for a brief interval from 4-3-1966 to 12-6-1968. He was a Certified Chartered Accountant by profession, working with M/s. Snamprogetti, an Italian multinational company (MNC) providing the services of designing, engineering, management of construction and the training of personnel in the sector of oil refineries, gas processing, petrochemicals, fertilizers and pipelines. Neither Snamprogetti, nor Mr. Quattrocchi had any experience of guns, gun-systems or any related defense equipments.

2.18. It emerged that after payment of SEK 1,682,132,196.80 (Rs.29615.00 lakhs), equivalent to 20% of the contract value, to Bofors on May 2, 1986 by the Govt. of India, Bofors remitted a sum of SEK 50,463,966.00

(equivalent to US \$ 7,343,941.98), on September 03, 1986, to A/c No. 18051-53 of M/s. A.E. Services Limited at Nordfinanz Bank, Zurich. This Account of M/s. A.E. Services Limited C/o Mayo Associates SA, Geneva, had been opened only a fortnight earlier, on August 20, 1986, by Myles Tweeddale Stott as its Director. This amount of SEK. 50,463,966.00 works out to be exactly 3% of the amount of advance paid by the Govt. of India to Bofors and was, thus, perfectly in accordance with the terms set out in the A.E. Services Ltd. – Bofors Agreement dated November 15, 1985.

2.19. From this Account of M/s. A.E. Services, an amount totaling US \$ 7,123,900 was transferred (\$ 7,000,000 on September 16, 1986, and \$ 123900 on September 29, 1986) to Account No.254.561.60W of M/s. Colbar Investments Limited Inc., Panama with the Union Bank of Switzerland, Geneva. An amount of US \$ 7,943,000 was further transferred from the above said Account of M/s. Colbar Investments Limited Inc. on July 25, 1988, to Account No.488.320.60 X of M/s. Wetelsen Overseas, SA with the Union Bank of Switzerland, Geneva. Thereafter, on May 21, 1990 an amount of US \$ 9,200,000 was transferred from the above said Account of M/s. Wetelsen Overseas, to Account No.123983 of International Investments Development Co., in Ansbacher (CI) Limited, St. Peter Port, Guernsey (Channel Islands). These Accounts of M/s. Colbar Investments Limited Inc., as well as M/s. Wetelsen Overseas, were being controlled by Ottavio Quattrocchi and his wife Maria Quattrocchi.

2.20. Enquiries further revealed that, while opening the Account of Colbar Investments Ltd. Inc. with the Union Bank of Switzerland, Geneva on March 30, 1984, Ottavio Quattrocchi had mentioned his address in India as "Colony East, New Delhi/ India", which was a fake and non-existent address.

2.21. Investigations in Guernsey (Channel Island) also revealed that the entire money, i.e. US \$ 9.2 million, was further channeled to various Accounts in Switzerland and Austria, within a period of 10 days of its receipt in Guernsey. Letters Rogatory were issued by the Court of Special Judge, Delhi to the competent Authorities in Switzerland and Austria for judicial assistance in investigation in these countries.

2.22. More investigative revelations demonstrated that Bofors also had another consultancy agreement with an entity incorporated in Panama, namely, "M/s. Svenska Inc." since the year 1978. Despite the Govt. of India's initial policy requiring foreign bidders to declare the agent in a prescribed proforma and its subsequent policy requiring foreign bidders to remove their agents and to reduce the commission amount from the deal price, Bofors yet again was found to be violating Indian national policies. By this so called agreement Bofors committed to pay a commission to M/s. Svenska Inc. out of any contract signed by Bofors in India, Sri Lanka, Nepal etc. This agreement was modified from time to time and it was agreed in January 1986 that commission to the extent of 3.2% of the ex-works value would be paid to M/s. Svenska Inc. Out of this, 2.24% (two point two four per cent) of the total ex-works value was to be paid without delay when the advance payment had been received by Bofors. The remaining 0.96% (point nine six per cent) of the ex-works value was to be paid pro rata without delay when the payments for deliveries had been received by Bofors.

2.23. Letters Rogatory were issued by the Court of Special Judge, Delhi to Switzerland, Sweden, Panama, Luxembourg, Bahamas, Jordan,

Liechtenstein and Austria, with a view to finding out other beneficiaries of the commission amounts.

2.24. The documents received from the Swiss Authorities, in response to the letter by Rogatory, revealed that the following payments were made by Bofors to Svenska from their Account with Skandinaviska Enskilda Banken, Stockholm, on May 6, 1986.

SEK 113039283.64	equivalent to	US\$ 16,070,412.80
SEK 28259820.64		FFR 27,957,875.84
SEK 28259820.92		CHF 7,346,128.29
SEK 18839879.98		XEU 2,720,363.87
Total SEK 188,398,805.18		

A calculation will show that this is almost 2.24% of the total value of the contract i.e., SEK 8410660984, exactly as per the terms of the aforesaid Agreement.

2.25. The following additional payments made by Bofors revealed that each additional payment works out to be exactly .96% of a particular invoice of Bofors and the date of payment also matches with the date of payment by the Govt. of India.

Invoice No., its date & date of payment	Gross amount of Invoice (in SEK)	Commission @ 0.96% (in SEK0)
1014271 dated 29.7.86 paid on 8.8.86	67,166,028	644,793.87
2010043 dated 20.2.87 paid on 2.3.87	66,657,160	639,908.75
102008 dated 19.2.98 paid on 9.3.87	13,981,805.92	134,225.34
2010136 dated 16.3.87 paid on 7.4.87	71,468,308	686,095.76
1010496 dated 23.3.87 paid on 2.4.87 and 1010488 dated 20.3.87 paid on 3.4.87	27,195,139 352,380	264,456.18

2.26. Inquiries further revealed that, including the above payments, M/s. Bofors had paid an amount equivalent to SEK 192156200.05 during the period from April 24, 1986 to March 30, 1987 in the name of M/s. Svenska Inc. Panama, for the said deal with the Government of India, which were credited to Account No.99921-TU of Mr. W.N. Chadha then resident of C-5/7, Vasant Vihar, New Delhi (India) with Swiss Bank Corporation, Geneva. The said Account was opened on August 9, 1983 with initial deposit of US \$ 160,000. For the said Account, Mr. W.N.Chadha had given a Powers of Attorney in favour of his wife Ms. Kanta W. Chadha and his son Hersh W. Chadha. It also emerged that the Board of Directors of M/s. Svenska Inc., Panama, in its meeting held on 30-4-1980, had authorized W.N. Chadha, then resident of C-5/7 Vasant Vihar, New Delhi, to open and operate bank accounts of any type at any banking institution by a Power of Attorney, with the fullest rights and powers to substitute any one else's name in place of his own for the said purpose.

2.27 Investigations revealed that Mr. W.N. Chadha and Mr. Quattrocchi had been transferring the funds received from Bofors frequently from one account to another and from one jurisdiction to another to avoid detection and to obliterate the trail of the money.

2.28 The advance payment of SEK 1,682,132,196.80 (Rs.296.15 crores) equivalent to 20% of the contract value was disbursed by the Govt. of India to Bofors on May 2, 1986. The balance 60% of the contract amount equivalent to SEK 6,728,528,787.60 was paid to Bofors during August 1986 to 1990, from time to time, against the deliveries. The investigations revealed that an amount of SEK 242.62 million was paid by

M/s. AB Bofors, as commission, to Quattrocchi and W.N. Chadha through M/s. A.E. Services and M/s. Svenska, in contravention of the policy of the Govt. of India not to allow middlemen/agents in the deal. No commission was to be paid by Bofors in connection with the contract. If any such stipulation in this regard did exist, the commission amount should have been reduced from the contract price. Thus the Govt. of India had to pay excess amount of about SEK 242.62 million, which was passed on by Bofors to its agents Mr. W.N. Chadha and Mr. Quattrocchi against the express terms of contract.

2.29. It shall be pertinent to mention relevant dates in form of a chart to further correlate the events and history:

S.N o.	Date	Particulars
1.	1975	Expert committee set up under Chairmanship of Lt. General K.V. Krishnarao which recommended induction of medium gun of 155mm caliber - -pg 157 of PB dated 12-04-2010.
2.	October 1978	Mr. W.N. Chadha entered with AB Bofors for representation in India for a period of three years ending in September 1981 which provided commission @ 2%
3.	March 1981	The Representation Agreement between AB Bofors and Mr. WN Chadha extended for another period of three years. This was followed by another agreement with M/s Anatronic General Corporation for a period of three years.
4.	March 1980- April 1982	Trials were conducted for guns whose tenders had been received by the Ministry of Defence -pg. 157.
5.	July 1982	Army Headquarters sent a draft CCPA paper to the Ministry of Defence in connection with procurement of guns. -pg 157
6.	October	Ministry of Defence asked Army Headquarters to

	1982	prepare detailed evaluation report on the basis of the trials conducted. -pg 157.
7.	December 1982	The General Staff Evaluation Report of 1982 shortlisted the following guns (a) British, (b) Austrian, (c) French Sofma and (d) FH-77B gun from Bofors, Sweden. - pg 157 & 158.
8.	May 1984	AB Bofors accepted as late as 30-11-9\84 a revised contract to Mr. WN Chadha with reduced rates since Bofors had not been able to get any business in India.
9.	May 1984	Negotiating Committee set up a negotiate with the short-listed companies. Pg 158.
10.	18.08.84 to 28.08.84	Negotiations were held between the short listed companies and the Negotiating Committee.
11.	24.08.1984	Army Headquarters recommended that the British and Austrian systems were not acceptable and one again recommended Bofors, Seden and Sofma, France. - pg. 158-159.
12.	30.11.1984	Mr. WNChadha signed the revised Representation Agreement with Bofors which provided commission @ 0.25% for a period of three years.
13.	End of 1985	Bofors informed Mr. WNChadha that as per the request of the Indian Prima Minister, Bofors could not employ any middlemen in the deal with the Indian authorities.
14.	03.01.1986	Bofors sent a letter to Mr. WNChadha stating that all representation agreements between Anatroic/Mr. Chadha and Bofors stood rescinded . as on 31.03.1985.
15.	January 1986	Mr. WNChadha signed an Administrative Consultancy Agreement with Bofors under which he was to be paid 100,000 SEK per month irrespective of Bofors getting any business in India.
16.	17.02.1986	Army Headquarters submitted their final technical evaluation report stating that the Swedish Bofors gun had a clear edge over the French Sofma gun. - pg. 159.
17.	10.03.1986	Bofors confirmed that they did not employ any agent in India in respect of the deal with Ministry of Defence for the FH-77B gun deal - pg. 140.
18.	21.03.1986	Revised offer received from Bofors, Sweden- pg. 159.

19.	22.03.198 6	Revised offer received from Sofma, France-pg. 159.
20.	24.03.198 6	The deal with Bofors was approved and MOU signed with the Government of Sweden-pg. 159.
21.	17.04.198 7	Leading newspapers in India gave coverage to Swedish Radio Broadcast that bribes had been paid to senior Indian politicians and key Defence figures in connection with the Bofors gun deal. Pg. 140.
22.	04.06.198 7	SNAB report submitted to Ministry of External Affairs – pg. 143.
23.	29.07.198 7	Union Minister of Defence, Mr. KC Pant, moved motion in Lok Sabha for appointment of a Joint Parliamentary Committee. Pg. 144.
24.	12.08.198 7	Rajya Sabha also approved formation of JPC-pg. 148.
25.	28.08.198 7	JPC set up – pg. 148.
26.	28.08.198 7	JPC submitted its report giving a clean chit to Shri WN Chadha – paper book dated 12.04.2010.

2.30. In the wake of these revelations, documents and evidences, the Income Tax Department commenced assessment proceeding in the assessee's case for different assessment years. It is pertinent to mention here that the assessment proceedings for AYs 1987-88 and 88-89 have been set aside by the CIT(A) on four occasions on the ground that investigations were in progress and material available on record was not sufficient to uphold the additions in respect of this commission. In the fifth round, the order of the AO has been confirmed by the CIT(A), which action is impugned before us.

2.31. The AO in the final detailed orders for AYrs 987-88 and 88-89, held that the assessee received commission from Bofors over and above the commission shown in his returns of income and made the additions, observing:

“5(i) M/s Anatronic General Corporation

The other account for business income pertains to M/s Anatronic General Corporation. The details of income shown at Rs. 2,52,476/- includes receipts of Rs. 84,034/- from M/s Bofors. In the course of assessment proceedings the assessee was required to explain as to why M/s Sevenka Inc. Panama, should not be treated as a front company of the assessee and receipt in its hands during the year should not be treated as income of the assessee. The details of receipts in this regard are as under:

	SEK	Equivalent to Rs.
24.3.86	4,22,909.48	7,13,771
30.5.86	18,83,98,806	32,70,81,260
27.2.86	1,35,564	2,72,217
5.5.86	11,30,39,283.66	19,79,67,221
		<u>52,60,34,469</u>

(Rupee equivalent to SEKs are computed in accordance with Rule 115 of I.T. rules.)

5(ii) In this connection the assessee has filed a copy of the paper book which was furnished during the appellate proceedings. The main arguments advanced by the assessee are as follows:

- (i) The alleged SNAB report is only a press report and more over this report has not been confronted for clarifications of the assessee.
- (ii) The addition is being based on news paper reports only, they do not have any evidentiary value.
- (iii) A number of extract have been reproduced from the report of Joint Parliamentary Committee (JPC) under scoring the argument of the assessee Coy. That Sh. W.N. Chadha cannot be described as middleman and there is no evidence to show that any middleman was involved in the process of acquisition of Bofors gun.
- (iv) The assessee cannot be asked to establish that he is not a middleman. The onus in this regard lies on the department which has not been discharged. A

notional income cannot be added in the hands of the assessee.

- (v) The assessee categorically denies that he has any knowledge about the existence of any Coy. By the name of M/s Svenska Inc.
- (vi) The assessee agreed for a remuneration at a reduced rate because of the threat of cancellation of the contract.
- (vii) The reliance on the phrase "well earned fee" in the letter written by Mr. Rehmborg cannot lead to a conclusion that Svenska was a front company of the assessee.

The submissions filed by the assessee have been considered but it is not possible to accept the same due to discussion made in the subsequent paragraphs of this order.

5(iii) It is seen that since 1978, Sh. W.N. Chadha, Proprietor of M/s Anatron General Corporation, New Delhi has been sole representative of M/s AB Bofors in India. The arrangement between Shri Chadha and M/s Bofors was extended from time to time through various agreements including the agreements signed in 1978, 1981, 1984 and 1986. In March, 1986, the Government of India placed an order with M/s AB Bofors for supply of a specified number of 150 MM Field Howitzer 778 guns and spares. In November, 1984, i.e. during the process of selection and finalisation of the guns to be purchased, the Government of India informed the public at large and vendors dealing with defence equipments supplies to India, in particulars, that there shall be no agent or middleman in all deals with Government of India.

5(iv) However, the National Audit Bureau of Sweden (hence forth referred to as SNAB report) in its report dated 1.6.87 revealed that commission payments were made to those who "took care" of the Bofors FH 77-B deal with Indian

Government. The SNAB report further mentioned that these payments are unquestionably related to the Bofors gun deal mentioned above and the SNAB had come to this conclusion on the basis of written statements made by M/s AB Bofors to the Swdish National Bank.

5(v) The SNAB report also confirmed that some of these commission payments were made into the Swiss account of M/s Svenska Inc. a company registered in Panama (which is a known tax haven). The SNAB report has quoted the President of M/s AB Bofors Per Ove Morberg, who has stated that the Principal beneficiary in M/s Svenska Inc. is an Indian who has been an agent for Bofors for 10 to 15 years. It is, therefore, evident that Sh. W.N. Chadha (Nic name Win Chadha) who has been representing M/s Bofors in India since 1978, is the Principal beneficiary of the payments made by M/s Bofors into the accounts of M/s Svenska Inc.

5(vi) A study of the agreements made by M/s Bofors with M/s Svenska Inc. Panama on the one hand and M/s Anatronc General Corporation on the other hand shows a remarkable similarity and oneness. A comparative study of some of the salient features is given below:

1987 Agreement Sevenska	Anatronc
a) signed by Bofors on 21.12.78	a) Signed by Bofors on 21.12.78
b) Signed by Svenska on 11.12.78	b) Signed by Anatronc on 24.10.78.
c) Consultant for promotion of sales in India, Nepal & Srilanka. Functions not spelt out.	c) Sole representative for promotion of sales in detail paras 2.1 to 2.18
d) Allowed to represent following companies also i) Satt Electroniks ii) Kockums iii) Kariskronavarvet iv) Whitehead Moto Fides	d) Allowed to represent following companies also: i) Satt Electroniks ii) Kariskronavarvet iii) Kariskronavarvet iv) Whitehead moto fides.
e) Commission 4%	e) Commission 2% - 1 lac

1984 Agreement Svenska	Anatronic
a) signed by Bofors on 10.5.1984	a) Signed by Bofors on 10-5-1984
b) Signed by Svenska on 29.5.84	b) Signed by W.N. Chadha on 30.11.84
c) Consultant and adviser for promotion of sales in India, Nepal and Srilanka either directly or through sole representative in the territory. (Sole representative for India is Anatronic)	c) Sole representative for India for promotion of sales. Functions spelt out in detail.
d) Allowed to represent the same six companies as in the agreement with Anatronic.	d) Allowed to represent the same six companies as in 1981 agreement.
e) Commission 5% on ex-works value of the order.	e) commission 0.25% and 1 lac SEK P.A. for expenses.
f) Valid upto 30.9.1987 from the date of signature.	f) Valid upto 30.9.1987 from the date of signature.
1986 Agreement Svenska	Anatronic
a) signed by Bofors on 2.1.86	a) Signed by Bofors on 3.1.1986
b) Signed by Svenska on 13.1.86	b) Signed by W.N. Chadha on 13.1.86
c) Consultant and adviser for promotion of sales in India either directly or through administrative consultant in India.	c) Administrative consultant for administrative services in India. Not permitted without Bofors written consent to undertake sales activity.
d) Allowed to represent. i) Satt. Electronik ii) White-head Fides of Italy. iii) Kollmorgen Corp. of USA iv) Teledyne Mec. Of USA v) SAFT SOGFA France	d) i) Satt. Electronik ii) White-head Fides of Italy. iii) Kollmorgen Corp. of USA iv) Teledyne Mec. Of USA v) SAFT SOGFA France
e) Commission 3.2% by letter dated	e) Monthly payment of 1.00 Lac

5.5.87 from Svenska Split into 2.24% as termination charges & 0.96% for consultancy during the period of the contract.	SEK. A car every 3 rd year and two 1 st class Air Ticket to Sweden every year.
f) Validity 1.1.86 to 31.12.90 . Commission on licence agreements to continue on payments being received by Bofors during two yrs. After 31.12.90	f) Validity 1.1.86 to continue after 31.12.90 until terminated by 6 months notice by either.
g) Can terminated due to major breach of contract by consultant or also by the administrative consultant in India.	g) Can be terminated due to major breach of contract by administrative consultant.

- It is seen that agreements were made or renewed on or about the same dates and were for identical periods of time.
- Both the companies were assigned the same products manufactured by same companies and were allowed to sell the products in the same territories.
- M/s Svenska Inc. was appointed to do business in India directly or through M/s Anatronic General Corp.
- The commission payable by M/s Bofors to Svenska Inc. and M/s Anatronic General Corp. reveals a very interesting pattern.
- In 1978 agreements, M/s Svenska Inc. was to get a commission of 4% and M/s Anatronic General Corp. was entitled to a commission of 2% thus total commission payable by M/s Bofors to the two representatives was 6%.
- In 1984 agreements the commission payable to M/s Svenska Inc. was increased to 5%. However, to begin with the commission payable to M/s Anatronic General Corp. was reduced from 2% to 0.25% and probably because of this Sh. W.N. Chadha did not sign the 1984

agreement immediately. It was finally settled that M/s Svenska Inc. would get 5.75%. It is only then that Sh. W.N. Chadha Prop. of M/s Anatronic General Corp. signed the agreement and once again, the total commission payable to both M/s Svenska and M/s Anatronic General Corp. was 6%.

It can be thus seen that what was allegedly lost by M/s Anatronic General Corp. was gained by M/s Svenska Inc.

5(vii) The fact that Sh. W.N. Chadha was associated with the Bofors gun deal with Govt. of India is also reflected in one of the letter written by Sh. Sven Rambergain, a associate of Sh. W.N. Chadha who wrote on 7.7.86 (after the Govt. of India had placed the order of Bofors) as follows:

“Thank you for the beautiful sterling silver ... which you presented me through Mr. Linder has advised me however to wait a letter from you and so I did.”

I am very pleased that you were involved in the Bofors billion business, not only considering your well earned fee but also proving that Anatronic Corp. can do business which some people – not of course – doubted some years ago.

I hope that Mr. Hallanbars will hear about your achievement however his health is not good and he is not showing himself”

5(viii) The facts mentioned above strongly indicate that Sh. W.N. Chadha was actually involved in the Bofors gun deal. However, when the Govt. of India made its intentions known to the vendors that no middleman should be involved, M/s Bofors and Sh. W.N. Chadha made some re-arrangements and introduced another company namely M/s Svenska Inc. under the changed agreements while Anatronic General Corp. was allegedly retained to only provide support services in India to M/s Bofors and bulk of commission due to Sh. W.. Chadha was given through M/s Svenska Inc. As mentioned above Sh. W.N.

Chadha finally received commission of 6% due to him; partly in the accounts of M/s Anatronc General Corp. New Delhi and balance in the accounts of Svenska Inc.

5(ix) There is also positive evidence to show that some of agreements between M/s Bofors and M/s Anatronc General Corp. and M/s Svenska Inc. were ante-dated to take care of the new arrangements. For example, in the agreements between M/s Bofors and M/s Svenska Inc. signed in January, 1986, there is a reference to an event which occurred in March 12986. The relevant portion of the said agreement is reproduced below:

“Clause 2.1.1. – on contract for sales related to Bofors 155 mm gun system including the supply contract and licensed agreement both signed on March 24,1986 Bofors will pay a commission of 3.2% of ex-works value of the order of ordnance received during the time of the validity of this agreement.”

5(x) Besides the assessee has not addressed to the subsequent developments on the issue of commission received by M/s Sevenska Inc. Panama, which is the front company of Sh. W.N. Chadha. The Govt. of India as a part of investigation to find out the beneficiaries of commission paid by M/s Bofors has filed a FIR on 22.1.90 through CBI. Sh. W.N. Chadha and M/s Anatronc General Corp. have been named in this FIR. The said FIR relies upon the report of Swedish National Audit Bureau which states that “the current president of AB Bofors per Ove Morbarg, has in his talks with the Swedish National Bank stated that the principal beneficiary in sevenska Incorporated is “an Indian who has been an agent for Bofors for 10-15 years.” Obviously the Indian Citizen who has been an agent for Bofors for 10-15 years is none other than Sh. W.N.Chadha.

5(xi) Further it would not be out of place to refer to the order dated 17.12.92 of the Hon’ble Supreme Court in which they have observed as under:

“though we refrain from giving any positive finding with regard to the alleged payment of the bribe allowed to the respondent, the allegations made in the FIR u/s 154 of the Code of Criminal procedure prima-facie constitute the offence alleged therein.”

“It cannot be said that the report of the JPC has acquitted the respondent and others of all the charges leveled against them in appraisal of the entire evidence. On the other hand, the report spells out that Bofors did not co-operate and the evidence relating to the recipient of the amount was not forthcoming.”

The above observations of Hon'ble Supreme Court effectively counters the contention of the assessee that the additions are based on mere news paper reports and JPC in this reports has given the assessee a clean chit. It will be relevant to mention that the Swiss Courts have also agreed about the commission of this crime.

5(xii) The discussion made in the above paragraph leads to the conclusion that there is sufficient material to show that Sh. W.N. Chadha was recipient of commission amounting to Rs. 52,60,34,469/- through its front company namely M/s Svenska Inc., Panama. Since Sh. Chadha has not disclosed the aforesaid commission income, the same is added to his income in this assessment order.”

2.32 In first appeal, the CIT(A), after considering the assessee's arguments and the material available on record, confirmed the AO's action making the following observations:

I have considered the facts of the case, I find that the report of the Swedish National Audit Bureau (SNAB) and letter written by Sh. Sven Rabinbergfan dated 07.07.86 lead to the conclusion that commission income to the extent of Rs. 52,60,34,469/- has been received by Sh. W.N. Chadha, partly in the account of M/s Anatronc General Corp., New Delhi and balance in the

account of M/s Svenska Inc. Panama. The SNAB, vide report dated 01-06-87 revealed that commission payments were made to those who "took care" of the Bofors FH77-B deal with the Indian Government. The SNAB report also confirmed that commission payments were made into the Swiss account of M/s Svenska Inc., a company registered in Panama which is known as a tax haven'. The SNAB report has further quoted the President of M/s AB Bofors Per Ove Morberg, who has stated that the principal beneficiary in M/s Svenska Inc. is an Indian, who has been an agent for Bofors for ten to fifteen years. It was only Sh. W.N. Chadha, who had been representing Bofors in India since 1978. Therefore, he was the principal beneficiary of the payments made by M/s Bofors into the account of M/s Svenska Inc.

The above view is further corroborated by letter written by Sh. Sven Rabmbergan to the assessee Sh. W.N. Chadha who wrote on 07-07-86 (after the Government of India had placed the order of Bofors) as follows:-

".... I am very pleased that you were involved in the Bofors billion business, not only considering your well earned fee but also proving that Anatronc Corporation can do business which some people- but I of course - doubted some years ago...."

It is further seen that the Government of India, as a part of investigation to find out the beneficiaries of commission paid by M/s Bofors, filed an FIR on 22.01.1990 through CBI. Sh. W.N. Chadha and M/s Anatronc General Corporation have been named in this FIR. This FIR relies upon the report of the Swedish National Audit Bureau which states that the current President of AB Bofors, Per Ove Morbarg, has in talks with the Swedish National Bank stated that the Principal beneficiary in Svenska Incorporated is "an Indian" who has been an agent for Bofors since ten-fifteen years. Obviously the Indian citizen who has been an agent for Bofors since ten-fifteen years was none other than Sh. W.N. Chadha.

Finally, the Assessing Officer has also pointed out that the Hon'ble Supreme Court vide order dated 17.12.92 has observed as under:-

“Though we refrain from giving any positive finding with regard to the alleged payment of the bribe allowed to the respondent, the allegations made in the FIR under section 154 of the Code of Criminal Procedure prima facie constitute the offence alleged therein.”

The Hon'ble Supreme Court has further denied “it cannot be said that the report of the Joint Parliamentary Committee has acquitted the respondent and others of all the charges leveled against them in appraisal of the entire evidence. On the other hand, the report spells out that Bofors did not cooperate and evidence relating to recipient of the amount was not forthcoming.”

The above observations of the Hon'ble Supreme Court effectively counter the contention of the assessee that the additions are based only on newspaper reports and the Joint Parliamentary Committee report has given the assessee a clean chit. Further the Assessing Officer has pointed out that the Swiss Courts have also agreed about the commission of this crime.

From the foregoing, it is clear that there is enough evidence to lead to the conclusion that the appellant Sh. W.N. Chadha, was recipient of Rs. 52,60,34,469/- as commission, through its front company namely M/s Svenska Inc. Panama. Report of the SNAB dated 01-06-87, letter dated 07-07-86 written by Sh. Sven Rabmergan to Sh. W.N. Chadha, observations of the Supreme Court in which the report of the JPC has been incorporated all to lead to the conclusion that Sh. W.N. Chadha was the recipient of Rs. 52,60,34,469/- as commission @ 6% through its front company M/s Svenska Inc., Panama and M/s Anatronc General Corporation, New Delhi.

It is clear that Sh. W.N. Chadha was actually involved in the Bofors gun deal. However, when the Government of India made its intentions known to the vendors that no middleman should be involved, M/s Bofors and Sh. W.N. Chadha made some rearrangements and introduced another company, namely M/s Svenska Inc. Under the changed agreements, Anatronc

General Corporation was allegedly retained to only provide support services in India to M/s Bofors and bulk of the commission due to Shri W.N. Chadha was given through M/s Svenska Inc.

In view of the above, increase in income by Rs. 52,60,34,469/- as receipt of commission of @ 6% partly in the accounts of M/s Anatron General Corp. new Delhi and balance in the accounts of M/s Svenska Inc. is held to be in order and therefore upheld.”

2.33. In the subsequent years, the AO held that this income received by the assessee has been utilized for earning purposes and on a notional basis, interest was worked out there on @ 5% per annum. This resultant amount was added in all the subsequent years as income. The CIT(A) confirmed these additions also.

2.34. Another addition relates to house property income which is continuing since earlier years.

2.35. The remaining grounds are in respect of staff welfare, salary to relative, motor car expenses and gifts presented by the assessee allegedly during the course of business. All these additions have been confirmed by the CIT(A).

ASSESSEE'S CONTENTIONS:

3.0 Aggrieved assessee is before us in second appeals. The Ld counsel for the assessee, Shri Ajay Vohra at the outset contends that the CIT(A) was not justified in confirming the additions in as much as except the CBI charge

sheet, no new material came in the possession of the AO, for the further collection of which material, the appeals were set aside to him. Broadly, on the same available material, the CIT(A) on the earlier occasions had repeatedly held that there was no sufficient material on record to sustain the additions made by the AO. In the absence of new reliable material indicating that the assessee actually received any commission or acted as a middleman as alleged, there is no justification in additions made by the AO and as confirmed by the CIT(A).

3.1 The Ld. Counsel for the assessee contends that there is no evidence on record that the alleged company Svenska Incorporated, Panama, was a front company of the assessee, or he was holding the power of attorney to operate these accounts. The additions have been made on the basis of adverse inferences drawn from following reports or information:

- (i) Report of national audit bureau of Sweden (SNAB report)

SNAB report is only a press report and has not been confronted to the appellant. The addition has been made on the basis of newspaper reports and they do not have any evidentiary value.

- Quamarul Islam v. S.K. Kanta, AIR 1994 SC 1733
- Laxmi Raj Shetty v. State of T.N., (1988) 3 SCC 319.

- (ii) Letter written by Sh. Sven Rhambergan, an alleged associate of the appellant.

The letter of Mr. Sven Ramberg on Pg. 56 does not show that any payment was made to Mr. Chadha for the contract between M/s Bofors and the GOI.

In any case, the letter written by Sh. Sven Rabmbergan, an alleged associate of the appellant, cannot be viewed as conclusive evidence that the appellant had received moneys. The truth of the contents of a document is not proved by mere contents of the document and

independent evidence for the purpose of substantiation is required. The letter may only be used as corroborative evidence.

- (iii) Report submitted by JPC giving clean chit to assessee and holding that assessee was not the middleman and no commission as is alleged is received.

- The JPC in respect of assessee role has concluded that:

- a. There was no evidence to relate Mr. W.N. Chadha to Svenska Inc. in Panama.
 - b. On page 223 para 7.184 - Chief District Prosecutor of Sweden did not find any evidence to show that the bribes have been paid to any Indian whether resident or non-resident to win the Bofors contract. As a result no further investigation was carried out.
 - c. Page 223 - Para 7.186 - The Inspector General of Military Equipment, Sweden has also confirmed that there was nothing to indicate that any of the Swedish laws have been violated so far Indian contracts were concerned.
 - d. On page 224 Para 7.191 - Bofors has stated that the Chief Prosecutor of Sweden, after investigation, had come to the conclusion that no offence was made under the Swedish law. Since the payment of bribe was also an offence under Swedish law it was pointed out that it can be reasonably inferred that no offence could be made out in respect of the payments made by Bofors.
- iv) Observations of Honorable Supreme court in its order dated 17.12.1992 reported in AIR 1993 SC 1082)

Hon'ble Supreme court's observation are only preliminary in respect of prima facie criminal case against the assessee. These observation cannot be held to be indicting the assessee's tax liability under income tax proceedings.

- v) Charge-sheet filed by the CBI.

The charge sheet filed by the CBI has been held to be conclusive proof for the fact that Svenska was assessed front company and payment received in this account are assessed commission. Charge sheet has no evidentiary value as it is only a preliminary statement of accusations levelled against assessee by prosecution to be followed by a series of further steps as under:

On receipt of information under section 154 or 155 of CrPC, the Police may investigate into the allegations/information received regarding commission of an offence.

- a. Upon completion of the investigation and after procuring evidence and/or examination of witnesses, the Police is required to file a report under section 173 of the CrPC before the Magistrate, inter alia, containing (a) the names of the parties, (b) the nature of information, (c) the names of persons who maybe acquainted with the case and (d) whether any offence appears to have been committed.
- b. Thereafter, the Magistrate may call for further investigation or on the basis of evidence produced before it, and after giving a copy of all the evidences and statements recorded to the accused, may proceed to frame charges under section 211 of CrPC.
- c. The charges, so framed, under section 211 of the CrPC are required to be proved in the trial, which may eventually lead to acquittal or conviction, as the case maybe, under section 232 or 235 of the CrPC.
- d. The charge sheet is, therefore, only a report by the Police on the investigation conducted in the matter and does not, on its own, constitute any evidence. In fact, the contents of the charge sheet are not even required to be proved. It is only the charges which are framed by the Magistrate under section 211 of the CrPC which are required to be proved.
- e. The charge sheet is only an opinion of the investigating officer about the commission of an offence or otherwise.
- f. Reliance in this regard is placed on the attached cases:

SATYA NARAIN MUSADI V. STATE OF BIHAR	AIR 1980 SC 506
K VEERASWAMI V. UOI	(1991) 3 SCC 655

vi) Photo copies of Hindu News Paper.

Photocopies of documents procured from Hindu can not be relied on by Income Tax Authorities as:

- 1) The agreements produced by the Revenue for the first time before the Tribunal are photocopies of certain agreements alleged to have been entered into between Bofors and Svenska, of which the assessee has denied any knowledge during the course of assessment.
- 2) The Revenue neither possess originals nor produced the originals in any proceedings..
- 3) It is settled law that photocopies can be relied upon only when the originals are available with the person relying upon the same. Reliance is placed upon the following cases:
 - a) Smt. J. Yashoda v. Smt. K Shobha Rani: 2007-TIOL-119-SC-Misc
 - b) Ashok Dhulichand v. Mdahavlai Dube: AIR 1975 SC 1748
 - c) Moosa S Madha v. CIT: 89 ITR 65 (SC)
 - d) Ram Saroop Sainin v. CIT: 15 SOT 470 (Del)
 - e) Moorti Devi v. ITO in ITO No. 1012/Del/2008
 - f) Vimal Chandra Golecha: 134 ITR119 (Raj) – International documents must be notarized and consularized before they can be adduced as evidence.
 - g) UOI v. Shantilal Motilal Mehta: 2006 (4) ALLMR 52

vii) Information received by letter Rogatory which gives immunity from use of such material in the cases of tax frauds.

- The Swedish authorities have stipulated that disclosed evidence cannot be used in tax proceedings to which CBI has agreed under an international protocol between 2 countries. The evidence being specifically excluded cannot be relied and has no evidentiary value.

viii) Concordance of dates between the agreements of Svenska and Anatronics:

- 1) A concordance of dates of agreements between Bofors and the assessee, on one hand, and Bofors and Svenska, on the other hand, has been prepared by the assessing officer to suggest that a consolidated commission of 6% was fixed by Bofors to be paid to the assessee either directly or through Svenska Inc.
- 2) However, a mere perusal of the statement of Mr. Chadha on Pg.72 – 73 of paperbook filed by the Revenue itself proves that the alleged concordance of dates is incorrect.
- 3) The concordance of rates of commission on pg. 190 of paperbook filed by the Revenue does not add up to 6% as alleged by the Revenue and, therefore, the theory of collusion between Bofors, Svenska and the assessee does not hold good.

3.2. The Ld. Counsel contends that none of the above evidence is reliable against the assessee.

3.3. It has been submitted that the burden of proof that the assessee received such payments rests on the Revenue. So far no documents or evidence has been brought on record that the assessee actually received extra payments. Reliance is placed on following case laws:

- (i) CBI v. V. C. Shukla & Ors, AIR 1998 SC 1406

“The rationale behind admissibility of parties’ books of account as evidence is that the regularity of habit, the difficulty of falsification and the fair certainty of ultimate detection give them in a sufficient degree of trustworthiness. Since, however, an element of self interest and partisanship of the entrant to make a person – behind whose back and without whose knowledge the entry is made – liable cannot be ruled out the additional safeguard of insistence upon other independent evidence to fasten him with such liability, has been provided for in section 44 by incorporating the words ‘such statements shall not alone be sufficient to charge any person with liability’.” (para 34)

(ii) *Kishinchand Chellaram v. CIT*, (1980) 125 ITR 713 (SC), at 723

“The burden was on the revenue to show that the amount of Rs. 107,350 said to have been remitted from Madras to Bombay belonged to the assessee and it was not enough for the revenue to show that the amount was remitted by Trilokchand, an employee of the assessee, to Nathirmal, another employee of the assessee. It is quite possible that Trilokchand had resources of his own from which he could remit the amount of Rs. 107,350 to Nathirmal. It was for the revenue to rule out this possibility by bringing proper evidence on record, for the burden of showing that the amount was remitted by the assessee was on the revenue.”

3.4. It has been averred that the assessee does not have any knowledge about the existence of any company by the name of M/s Svenska Inc., and the assessee cannot be described as a middleman, as there was no evidence available to show that any middleman was involved in the acquisition of the Bofors gun by the Govt. of India. The onus to prove that the assessee was a middleman in the acquisition of Bofors gun, was on the department, which onus has not been discharged. Reliance has been placed on:

K. P. Verghese v. ITO, *Ernakulam & Anr.* 131 ITR 597

“It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue and the

second condition being as much a condition of taxability as the first, the burden lies on the Revenue to show that there is understatement of the consideration and the second condition is fulfilled. Moreover, to throw the burden of showing that there is no understatement of the consideration, on the assessee would be to case an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond that declared by him."

3.5. It has been argued that the documents allegedly acquired from Swiss Authorities in response to the Letters Rogatory issued by the Govt. of India, cannot be relied on as evidence by the Revenue. In any case, no such documents have been brought on record, much less confronted to the assessee. Hon'ble Supreme court in the case of Kishinchand Chellaram v. CIT, (1980) (supra) held that:

"The sole question which arises for determination in the appeal is whether there was any material evidence to justify the findings of the Tribunal that the amount of Rs. 1,07,350 said to have been remitted by Tilokchand from Madras represented the undisclosed income of the assessee. The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was the letter dated 18th February 1955 said to have been addressed by the Manager of the Punjab National Bank Limited to the Income Tax Officer. Now it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding."

3.6. It has been urged that all the papers in behalf of Bofors – Svenska transactions like agreements, payment invoices, transfer of money, meeting of board of directors and resulting power of attorney, copy of Svenska bank a/c which have been conclusively relied on by the lower Authorities, are merely photocopies obtained from "The Hindu" newspaper. There is neither authentication of source, contents or allegations from either the editor of, or any other responsible person from the Hindu, to ratify them and allow the

assessee a chance of cross examination. This evidence cannot be relied on, as:

- 1) The news agency has not been produced with the originals or certified copies of the documents to testify them to be true and correct copies.
- 2) Page 152 of the paper-book filed by the Revenue – Termination agreement between Bofors and Svenska Inc. clearly suggests that the winding up costs were paid due to the restriction put up by the GOI and they do not amount to commission.

3.7. The Ld counsel, on the basis of the above arguments, pleads that there is no case against the assessee that Svenska was his benami front company, or that the alleged commission was received by him. The evidence being photocopies, hearsay or assumptions, is, firstly inadmissible and, in any case, it does not conclude that the assessee received this income. Therefore, the additions deserve to be deleted.

3.8. The notional interest income was added by the AO as business income on such alleged commission in assessment year 1988-89, by making the following summary observations:

“4. Income from Business:

In the assessment orders, it has been held that M/s Svenska Incorporated, Panama, is a front company of the assessee and accordingly the commission paid by M/s Bofors into the foreign bank accounts of M/s Svenska represents the receipt of the assessee assessable as income of the assessee. On the same analogy, accrued interest on the secret commission parked in foreign banks has also to be added to the income of the assessee. However, the quantum of accrued interest is calculated @ 5% cumulative on the principle amount as has been followed in other assessment years in this case. Such

accrued interest works out to Rs. 2,76,61,841/-, which is added to the income of the assessee.”

3.9. The CIT (A) also confirmed this summary order by confirming the addition

3.10. The Ld counsel contends that the addition is purely notional in nature; made merely on surmises and conjectures. It is vehemently argued that the principal amount qua which the earning of interest is being notionally imagined itself is under serious challenge. There is no evidence that the assessee actually earned this commission or made any investment anywhere. Without there being even a remotest clue about receipt and investment, just by figment of imagination it has been concluded that the assessee was in possession of money, invested it for earning interest and earned the same at the rate of 5% pa. Nothing is available to hint as to who paid the interest and on which investment.

3.11. The Ld counsel vehemently argues that no evidence in respect of earning such notional income has been brought on record to suggest that the commission was received by the assessee and it was ever gainfully employed for earning some income in any manner whatsoever. In the absence of any information, evidence or record notional interest income cannot be added in the assessee's hands, merely on hypothetical observations. The addition is unjustified in all the years.

3.12. In respect of additions to income from house property, the Assessing Officer computed the income under the head “Income from house property” at Rs. 3,89,000 as against income of Rs. 26,000 declared by the assessee, after adding notional interest @ 15% on interest free security deposit received by M/s Hertz Agencies Pvt. Ltd.(HAPL), tenant of the assessee

and substituting rent of Rs. 2600 by Rs. 2900 as received by HAPL. The AO made the additions by making the following observations:

“3(i) Income from house property located at E-1, Placimo, Bombay:

The previous year of income from house property is 1.7.85 to 30.6.86. Against the returned rental income of Rs. 26,000/- income from house property was calculated at Rs. 3,89,000/- in the earlier orders which was arrived at after taking into consideration the yield factor of the interest free security deposit amounting to Rs. 24,00,000/- at 18% p.a. and annual value was determined by invoking the deeming provisions of Section 23(j) of the I.T. Act.”

3.13. The above addition has been confirmed by the CIT(Appeals) in all the years.

3.14. The Ld. Counsel contends that this issue stands decided in the favour of the assessee by the order of the Tribunal in assessee's own case in asstt. Yrs. 1985-86, 1988-89, 1991-92, 1996-97. The ITAT, vide consolidated Order dated 5-11-2001 rendered in ITA nos. 3762/D/92, 2098/D/95; WTA nos. 208 to 211/Del/95 & ITA no. 2518/Del/95, has held as under:

“25. After hearing rival submissions and considering the other materials on record we find that assessee deserves to succeed in these two grounds. There is no dispute that assessee is charging rent @ 2600/- from M/s Hertz Agencies who originally took flat on rent from Dr. D.M. Chaddha who was natural guardian of the owner of the flat. The rent of Rs. 2900/- was charged by M/s Hertz Agencies from BASF and the same has been shown by that assessee. There is no question adding back the same rent in the case of the assessee when the same was not received. The amount of Rs. 2600/- was only received as rent per month from June 1982. The same rent has been shown in Assessment year 1983-84 and 1984-85 which were duly accepted by the Department. Therefore we feel that there was no justification in adding the income on account of enhanced rent. Therefore the

AO is directed to accept the rent of Rs. 2600/- shown by assessee.

26. Regarding notional interest we find that there was no justification in making in addition on account of notional interest in the hands of the assessee. We further find that in case of M/s Hertz Agencies Pvt. Ltd. an addition of Rs. 3,89,000/- was made on account of notional income as it was found that security receipt of Rs. 15 lakhs, no income was shown on that account. The matter traveled up to the stage of Tribunal and Tribunal found that the security receipt of Rs. 15 lakhs has been duly shown in balance sheet and the amount of Rs. 15 lakhs has been utilized for the purpose of business and any income earned on that account have already been taken into consideration in profit and loss account. Accordingly the addition of Rs. 3,89,000/- was deleted. This decision was rendered by the Tribunal in ITA no. 7973/D/92 for assessment year 1987-88 vide its order dated 15.3.99. Therefore, we find that there is no question of any notional interest on account of security deposit which was received by a different legal entity. Accordingly, we delete the addition on account of notional interest."

3.15. Further, reference is also made to the following decisions in this regard:

CIT vs Satya Co. Ltd. 75 Taxman 193(Cal HC)
Super leasing V ACIT 56 TTJ(Bom) 258
CIT V J.K. Investors(Bombay) Ltd. 248 ITR 723
Commissioner Of Wealth Tax Vs. Akshya Textiles Trading &
Agencies (P) Ltd.: 2008 214 CTR (Bom) 468

3.16. Apropos disallowance of business expenditure, the Id. Counsel contends that they are in the nature of business expenditure, many of them have been allowed by the Department and the ITAT in earlier years and as such, they should be allowed.

REVENUE'S CONTENTIONS:

4. The Ld Special Counsel for the Revenue Shri, G. C. Shrivastava, Advocate, on the other hand, vehemently contends that the contentions being put forth are not tenable. The proceedings under income tax and those under the criminal law are fundamentally different in nature.

4.1 The Bofors commission episode is a very complex investigation, it involved various national and international Agencies and extensive efforts to collect and collate the information. Discovery of evidence faced various road-blocks and even a single clue was so vital that it could have changed the line of investigation. Under these circumstances, the assessee's plea that the CBI Charge sheet did not amount to new material for the AO to make additions is not correct. The plea that the CBI charge sheet, being a preliminary report, cannot be relied as admissible evidence in income tax proceedings, is not tenable. The AO went through the CBI documents and found various clues about Svenska being assessee's front company, dates of concordance in Agreements, the Svenska Board authorized power to operate bank account in assessee's or any other name at his discretion. His Swiss bank A/c and Bofors invoices give all the details of transfer and their proximity with the dates of actual payments and the defense deal. There is no merit in assessee's plea in this behalf.

4.2 The Ld DR contends that Bofors has not denied making payments to the so called recipients Svenska and A E Services. It only says that they are not middleman or agent and the payment therefore represents winding up cost and it does not represent kickbacks or middlemens commission. Though this explanation has its own fallacies, the main issue before AO was to assess correct income tax payable by the assessee. Bofors officers earlier accepted having paid the commission to its old Indian agent. However in their

representation before the JPC, disclosure of actual names was avoided. This does not take away the evidentiary value of their earlier statement.

4.3. The AO, thereafter, by various inferences and facts based on material on record, i.e. concordance of dates, Mr Rhamberg's letter, Letter Rogatory evidence, assessee's incorrect replies and other material collected by the CBI and other investigations, came to a proper conclusion that Svenska was the assessee's front company and the payments to Svenska were in fact payments to the assessee.

4.4 Replying to the written submissions filed by the assessee, the ld. counsel made the following contentions in respect of the assessee's each proposition:

S. No.	Summary of written propositions of the Appellant	Response of the Revenue
1	Apart from the charge sheet filed by the CBI and certain Agreements between Bofors and Svenska all other evidences are the same, which have been considered earlier by the CIT-A (Appeal).	As submitted during the course of arguments, the first assessment made in the year 1990 was based on only two Agreements of Bofors – one with Anatronc and the other with Svenska and the letter of Mr. Ramberg. In the second assessment made in the year 1992, the SNAB report was added. In the third assessment, the details of FIR filed by the CBI and the observations of Hon'ble High Court were also relied upon. It is for the first time that vital facts like the existence of a bank account in which the money paid to Svenska was credited and the fact that such account in the Swiss bank was operated and managed by the assessee under a Power of Attorney, came to light.

2	<p>There is no evidentiary value of the charge sheet. The charges have to be proved. The charge sheet is only a report on the investigation conducted in the matter and does not constitute an evidence. At best, it is an opinion of the Investigating officer.</p>	<p>Revenue has not placed reliance on the opinion of the Investigating officer given in the charge sheet or on the inferences drawn regarding the commission of any offence stipulated in the charge sheet. It is also not the case of Revenue that the assessee should be charged to tax merely because the charge sheet holds him guilty of certain offences. The reliance of the Revenue is mainly on Paras 54, 55, 57 & 58 of the charge sheet. Reliance is primarily on the facts given in the charge sheet particularly with regard to bank Account no. 99921-TU with Swiss Bank Corporation, Geneva. Mr. Chadha had given full Power of Attorney in favour of his wife and his sons. The Board of Directors of M/s Svenska, in their meeting held on 30.04.1980, authorized Mr. Chadha to open and operate bank accounts of any type at any banking institution through a Power of Attorney with the fullest rights and powers to substitute anyone else's name in place of his own. It was under this power given by the company Svenska that the said bank Account was opened and operated by Mr. Chadha. A perusal of invoices showing the payment of money by Bofors to Svenska clearly indicate that the money was credited to the said account no. 99921-TU. (Pages 165 to 171 of</p>
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		<p>Revenue's Paper Book). This vital fact has not been denied in the written submissions. The legal heir and the son of Mr. Chadha, Shri Hersh W. Chadha, has not filed any statement or affidavit to the effect that the said Bank Account did not exist or if it existed, it was not in his favour or in favour of his mother, Ms. Kanta W. Chadha. Under these circumstances, a mere assertion that the Revenue cannot rely on the charge sheet is wholly misplaced. The facts given in the charge sheet, once confronted, have to be denied before the onus can shift to the Revenue.</p>
3	<p>The agreements filed by the Revenue are mere photocopies, the originals of which have not been produced. Photocopies can be relied upon only when the originals are available with the Revenue.</p>	<p>Photocopies can be relied upon as secondary evidence under certain circumstances. The provisions of the Indian Evidence Act were referred to. The authenticity of these documents has been confirmed from the foreign authorities through Interpol. These Agreements are typed on the letter head of Bofors or Svenska. There is no assertion that these agreements are false or fabricated. The only assertion is that originals must be produced. The plea of ignorance with regard to Agreements with Svenska is not sustainable in view of the fact that the payments arising from the said Agreements have been credited to the account no. 99921-TU, which was opened by the assessee under the Power of</p>

		Attorney given by Svenska.
4	The SNAB report is only a press report and has not been confronted to the assessee.	SNAB report is not a press report. It forms a part of the Report of the Parliamentary Committee (JPC), the Report on which heavy reliance was placed by the assessee during the course of arguments.
5	Letter of Mr. Ramberg does not show that any payment was made to Mr. Chadha and further that the letter is not conclusive.	The contents of the letter clearly indicate that a substantial amount was paid to the assessee in the Bofors gun deal. The letter may not be conclusive by itself, but when seen in the backdrop of other circumstantial evidence, it assumes great importance and does corroborate the fact of the receipt of commission.
6	The assessee does not have any knowledge about the existence of a company in the name of M/s Svenska and the assessee cannot be described as a middleman.	The assessee cannot deny the knowledge about the existence of the company in the name of Svenska for the reason that Svenska, by their Board resolution dt. 30.04.1980, authorized the assessee to open any bank Account anywhere in the world in the name of the company and to operate such account the way he wanted. The question whether there was any middleman in the gun deal is of little importance. The most vital fact is that the appellant did receive commission through the bank account of Svenska and this fact is sufficient to establish that there was income chargeable to tax.
7	Documents obtained from the Swiss Authorities cannot be	The documents were obtained under a Letter Rogatory. What

	relied on as evidence.	has been relied on is the facts as appearing in the said documents.
8	Mr. Chadha in his statements pointed out material inconsistency in the concordance table of the Assessing Officer.	Mr. Chadha merely pointed out certain omission of dates and events. He did not demolish the propositions of the Revenue that both the Companies – Svenska & Anatronc – worked for Bofors for the same deals and at the same point of time. The Agreements were signed it or around the same time. While the commission of Anatronc was reduced following the declaration of the Govt. of India that there will be no middleman in the deal, the commission of Svenska was raised. The commission so paid to Svenska reached the assessee through the bank account as described earlier.
9	The assessee have relied on various observations in the JPC Report to point out that Mr. Chadha cannot be described as a middleman between Bofors & the Govt. of India.	The assessee has relied upon various observations in the voluminous Report of JPC. However, the conclusions reached by the JPC given under a separate chapter towards the end of the Report have not been referred to (Page 231). It has been pointed out by the JPC that Bofors did not cooperate with the JPC. The finding that there was no middleman is not relevant. What is relevant is whether the assessee received any commission over and above what was disclosed in the return of income. The Assessing Officer has referred to the observations of the Hon'ble Supreme Court in this regard on

		<p>page 10 of his order. Para 167, 168 and 183 of assessee's paper book may also be referred to. The report of the JPC is of 1988. A lot of enquiries have been conducted since then and so many facts have come to light which can not be ignored by reference to the JPC report of 1988.</p> <p>The SNAB Report clearly states that an Agreement exists between Bofors & Svenska and substantial amounts have been paid to a previous agent of Bofors in India who was none other than the assessee.</p> <p>The Revenue placed reliance on the decisions in the cases of "Sumati Dayal" and "Durga Prasad More" (forming part of the Revenue's Paper Book and referred to in the course of arguments).</p>
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4.5 It is contended by the Id DR that the JPC has worked under a different frame work and separate terms of reference. There is no clean chit given to the assessee, as on various occasions, the JPC has categorically mentioned that proper information has not been submitted. During the deposition of the Bofors' representative, on various occasions, the Officer replied that the crucial information was not available at Delhi and would be supplied from Sweden. However there is no mention that any such information was ever furnished. The JPC had to submit its Report to both the House of Parliament within a reasonable time. Therefore, based on the

material laid before the Hon'ble Committee findings were given. The JPC report cannot be held to be giving the assessee a clean chit for unconcluded Income Tax, Criminal, FERA and other similar proceedings. Had it been otherwise, the Hon'ble Supreme Court would not have dismissed the assessee's petition to quash the FIR. Consequently, there is no merit in the plea that the JPC Report gives the assessee a clean chit from income tax liabilities.

4.6 The Revenue has filed a paper book on record, containing various documents in support of its contentions.

4.7. Apropos additions on account of business income by way of interest earned on commission in subsequent years, the Id. DR relies on the orders of lower Authorities.

4.8. In respect of addition on account of House Property and business disallowances also the Id DR relied on the orders of lower Authorities.

ASSESSEE'S REJOINDER:

5. The Ld. Counsel for the assessee, in the rejoinder, contends as under:

- 1) The SNAB report, without naming the person, states that an agreement exists between Bofors and _____ concerning the settlement of commission subsequent to the FH-77 deal but does not state that commission was paid in connection with the deal.
- 2) The SNAB report also states that amounts have been paid to the previous agent of Bofors in India without naming the person, without indicating the nature of the payment (whether commission or otherwise) or even indicating as to what the purpose of the payment was.
- 3) The SNAB report further mentions that payments of SEK 170-250 million were made by Bofors as winding up costs but does not state to whom such payments were and for what purpose.

- 4) In the CBI charge-sheet, it is alleged that the assessee had a Power of Attorney to own and operate an account on behalf of M/s Svenska Inc. Leave aside the originals, even no Photocopy of such Power of Attorney has ever been produced.
- 5) Certain payments were received by Svenska Inc. from Bofors. The assessee denies knowledge of any such receipt, since it does own Svenska Inc.
- 6) Certain payments were made into the Bank Account (no.999921-TU) of the assessee with Swiss Corporation Bank. The aforesaid allegation can be proved only if the bank statement of the account is produced. In fact, the account number belongs to Svenska Inc. and not to the assessee. It is also alleged that the assessee had, through a Power of Attorney, authorized his wife, Mrs. Kanta Chadha and his son Mr. H.W. Chadha to operate the Bank Account. But what to talk of the originals, not even a photocopy of such Power of Attorney has ever been produced.
- 7) In a meeting of the Board of Directors of Svenska Inc., held on 30.04.1980, the assessee was authorized to open and operate bank accounts of Svenska Inc through a power of attorney. The allegation can be proved only if the Minutes of the meeting held on 30.04.1980 are produced. However, not even a photocopy of such Minutes of the meeting, much less the originals have ever been produced.
- 8) The Telex message only states that the evidence that Mr. Katre, Director CBI had handed over to the Chief Prosecutor is the same as that the Swedish authorities have in their possession. It does not state if the Chief Prosecutor himself has the originals so as to certify that the Agreements are true copies of the originals.

5.1. In respect of the alleged summary of discussion between the Govt. of India and Bofors,

- 1) Bofors has categorically denied payment of any bribe and has also confirmed that negotiations had been conducted directly with the

Govt. of India. Bofors has also stated that the SNAB Report was based on partial information and, therefore, carried incorrect impressions.

- 2) Bofors has also confirmed that in order to fulfill the conditions laid down by the Govt. of India it had had to terminate its Agreements with the Consultants in India and pay them for the settlement and that all agreements with the Consultants were terminated by January 1986.
- 3) Bofors confirmed that no winding up charges were paid to the assessee.
- 4) Bofors has also furnished the address of Svenska Inc. along with a list of Directors and its Bank Account details, which nowhere shows any involvement of the assessee.

5.2. The Ld counsel contends that there is no tangible material to even remotely suggest that any commission was paid to the assessee in connection with the Bofors Contract and, therefore, the addition made by the Assessing Officer and confirmed by the CIT(A) should be deleted. The documents furnished by the Revenue, cannot be admitted in evidence and, therefore, no addition in this regard can be sustained. Suspicion, howsoever strong, cannot form the basis for such additions. Reliance in this regard is placed upon the following decisions:

- 1) Krishnand v. State of Madhya Pradesh: AIR 1977 SC 796 – regarding the Prevention of Corruption Act
- 2) Jayadayal Poddar v. Mst. Bibi Hazra: AIR 1974 SC 171 – in respect of benami transactions
- 3) CIT v. K Mahim Udma: 242 ITR 133 (Ker)
- 4) Dhakeshwari Cotton Mills: 26 ITR 775 (SC)
- 5) Omar Saha: 37 ITR 151 (SC)
- 6) Jindal Saw: 118 TTJ 228 (Del)

OBSERVATIONS, FINDINGS AND DECISION :

6. We have carefully considered the rival arguments, the material available on record and the case laws cited by both the parties. The facts have been narrated above. We shall first decide various issues which have been raised for adjudication regarding the admissibility of the evidence relied on by the lower Authorities, as obtained from various Agencies, consequent to the search on the assessee, his statements on oath and to decide nature of income tax proceedings, assessee's tax liability etc. The same will be determined hereunder.

NATURE OF INCOME TAX PROCEEDINGS AND POWERS OF AO

6.1 The dispute before us concerns the determination of the income tax liability of the assessee rather than fixing any criminal liability or accountability of the assessee for any other law or obligation. The admissibility of documents, evidence or material differs greatly in income tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused, establishing it beyond doubt, whereas as per the settled proposition of law, the income tax liability is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities.

6.2. The proceedings for assessment before the Assessing Officer have been described as quasi-judicial in character by Hon'ble Supreme court in Indian & Eastern Newspaper Society v. CIT (1979) 119 ITR 996(SC).

- i) In the case of Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775(SC), the Supreme Court has observed that assessment

proceedings are purely administrative. After the receipt of the return also the Assessing Officer is entitled to make private enquiries to find out as to whether there is reason to suspect that the return is incorrect or incomplete. No objection can be taken to such enquiries made behind the back of the assessee at that stage, as they are all administrative inquiries. They assume a quasi-judicial character only after the issuance of notices for assessment. This is so, because the Assessing Officer is not a court. Similar findings have been given in *Official Liquidator & Liquidator of the Colaba Land & Mills Co. Ltd. Vs. Deshpande (VM) 1972 83 ITR 685 (SC)*.

ii) In *Mahindra & Mahindra Ltd. v. Union of India AIR 1979 SC 798* it has been held that though the AO has the same powers as are vested in a court for the limited purposes mentioned in section 131, the proceedings before him are not strictly judicial proceedings, though they are deemed to be such for limited purposes.

iii) The Hon'ble Delhi High court in *CIT (Addl) v. Jay Engineering Works Ltd. (1978) 113 ITR 389 (Del.)* held that the Assessing Officer has, no doubt, to hear "evidence", but such evidence may consist of material which would be wholly inadmissible in a court of law.

iv) In *Vimal Chandra Golecha v. ITO (1982) 134 ITR 119 (Raj)*, secondary evidence in the form of photo copies received from the Indian Consulate was held to be material on record.

v) The Hon'ble Supreme court in *CIT v. East Coast Commercial Co. Ltd. (1967) 63 ITR 449(SC)*, held that even information contained in some judgment or admissions before a Commission's proceedings, before they were declared ultra virus, were also to be treated as material available on record.

- vi) In the case of Baghat Halwai, In re (1928) 3 ITC 48 (All) it has been held that AOs proceedings are, to some extent, in the nature of a private inquisition; they are confidential and they are not open to the public. To some extent, he is a party and a judge in his own cause.
- vii) The Hon'ble Supreme court in Gadgil (SS) v Lal & Co. (1964) 53 ITR 231 (SC), held that the AO is, no doubt, an Authority appointed by the State to exercise statutory powers to ascertain the income of a subject and the tax payable by him to the State, but his position cannot be equated to that of a judge or a court deciding a "lis" between a citizen and the State. He is not bound to lead "evidence" on his own account with a view to rebutting the evidence of the assessee.
- viii) In CIT v. Metal Products of India (1984) 150 ITR 714 (P&H), it was held that the AO may gather information in any manner he likes, behind the back of the assessee and utilize the same against the assessee, even if it does not, in all respects satisfy the requirements of the Indian Evidence Act. What is necessary is that he should have material upon which to base the assessment; "material" as distinguished from "evidence" which includes direct and circumstantial evidence.
- ix) In Gopinath Naik v. CIT (1936) 4 ITR 1 (All.), the Hon'ble Allahbad High Court held that the very nature of the proceedings for assessing the income tax liability, necessitates the use of such media as the AO chooses for collecting information which he may not like to disclose to the assessee and he would be perfectly within his rights to refuse to disclose to the assessee the source of his information and the name of the informant.

x) In *Dinshaw Darabshaw Shroff v. CIT* (1943) 11 ITR 172 (Bom.), the Hon'ble Bombay High court held that although an Assessing Officer making an assessment is not strictly acting as a court of law, it is clear from section 131, that he is acting in quasi-judicial capacity, and he ought to conform to the more elementary rules of judicial procedure, and in particular to conduct the case himself, and not allow somebody else, even his superior officer, to interfere in the conduct of the case. In other words, the Authorities acting under the Income-tax Act have to act judicially and one of the requirements of judicial action is to give a fair hearing to a person before deciding against him.

xi) In the case of *S.S. Gadgil v. Lal & Co.* (1964) 53 ITR 231 (SC) Honible Supreme Court held that proceedings for assessment is not a suit for adjudication of a civil dispute. The argument that income-tax proceeding is in the nature of a judicial proceeding between the contesting parties, is a matter which is not capable of even a plausible argument. The income-tax authorities who have power to assess and recover tax are not acting as judges deciding litigation between the citizen and the State: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State.

xii) It has been held by the Hon'ble Allahabad High court in *ITO v. Joti Prasad Agarwal* (1962) 44 ITR 574 (All.) that proceedings for

assessment are not proceedings relating to a civil rights. The liability to income-tax is not a civil right enforceable as such in courts of law. Such proceedings are of the nature of revenue proceedings

6.3. Rules of evidence do not govern the income tax proceedings, as the proceedings under the Income-tax Act are not judicial proceedings in the sense in which the phrase "judicial proceedings" is ordinarily used. The Assessing Officer is not fettered or bound by technical rules about evidence contained in the Indian Evidence Act, and he is entitled to act on material which may not be accepted as evidence in a court of law.

6.4. The Hon'ble Supreme Court in the case of Chuharmal v. CIT (1988) 172 ITR 250 (SC), in this context held that - What is meant by saying that the Evidence Act does not apply to proceedings under the Income-tax Act is that the rigor of the rules of evidence contained in the Evidence Act are not applicable, but that does not mean that when the taxing authorities are desirous of invoking the principles of the Act in proceedings before them, they are prevented from doing so. All that is required is that if they want to use any material collected by them which is adverse to the assessee, then the assessee must be given a chance to make his submissions thereon. The principles of natural justice are violated if an adverse order is made on an assessee on the basis of the material not brought to his notice.

6.5. In the case before us, it has not been challenged that relevant material was not confronted to the assessee, except the Swiss accounts pertaining to Svenska, assessee and the Resolution of board of directors and consequent power of attorney in the assessee's favour.

EFFECT OF CRIMINAL PROCEEDINGS ON INCOME TAX PROCEEDINGS:

6.7. The effect of parallel criminal proceedings on income tax proceedings has been rightly observed in the case of R.P. Vashisht Vs. DCIT (2006) 157 Taxman 301 by the Hon'ble Punjab & Haryana High Court - the assessee was a State Government servant. Pursuant to a search conducted at the premises of the assessee, certain loose slips relating to expenditure incurred by him for renovation of his ancestral house were found. One diary indicating payment of illegal gratification to the assessee was also found with one 'S', the liaison agent for the companies supplying the electricity goods to the State Administration. The Hon'ble High Court upheld the decision of ITAT, holding that whether the illegal gratification was received by the assessee or not, might have to be decided in criminal proceedings, but for the purpose of income-tax proceedings, the material in hand was sufficient to fasten the tax liabilities upon the assessee.

6.8. In view of the above referred judicial authorities, the material available before the AO, is reliable evidence in the case before us.

CONSIDERATION OF MATERIAL AVAILABLE ON RECORD:**SWEDISH AUDIT BUREAU REPORT (SNAB)****a. THE SNAB REPORT**

i) The SNAB Report is an official document, prepared by the Swedish Govt. at the request of Govt. of India. It was submitted through the Indian Ambassador to Sweden by official channel. Its functions are broadly similar to comptroller & Auditor General of India. The JPC has accepted it as an official document. Material made available by this channel is obtained by due process of law. The

report has been furnished by the Swedish Govt. through diplomatic channels at the request of the Indian Govt. Both the countries are sovereign nations and it is wholly inappropriate on the part of assessee to insist for originals. When the SNAB Report is reproduced in the JPC proceedings which are public documents, the SNAB report also becomes a public document. The assessee, while appearing before the JPC, neither demanded the originals nor doubted the authenticity of its contents. In our view, it is not available to the assessee to question SNAB report in income tax proceedings.

ii) We have already mentioned the difference between the evidence and material available on record in the Evidence Act and in income tax proceedings. The Income tax Act uses the words 'material available on record' and the SNAB Report accepted by the Govt. of India and the JPC and not objected to by assessee can not now be called in question. This Audit Bureau is not a private organization, but a Swedish Govt. Dept. In the light of these observations, we are unable to accept the assessee's plea that they are inadmissible evidence and can not be relied on in income tax proceedings.

b. SVENSKA AGREEMENT

The next objection is in respect of the alleged Svenska Agreement and concordance of dates and assessee's claim that it has no connection with Svenska. The noteworthy fact is that payment of Svenska commission in Switzerland was increased and that of the assessee in India was reduced. The activities suggest that assessee's relation & role with Bofers remained the same, except cosmetic changes on paper. CBI information about the assessee holding Svenska power of attorney to operate, manage and windup the Svenska a/c and the Resolution of

Board of Directors was sufficient to come to a reasonable conclusion about the assessee's incorrect stand. Profound coincidences and concordance of dates between agreements, other material and various events lead to the process of drawing proper inferences, reckoning preponderance of probabilities, human conduct and surrounding circumstances.

c. The letter of Sven Rhambergan and its contents have not been denied by the assessee. It is admissible material on record.

d. The JPC Report, being an authentic report in public domain, is an admissible evidence. Whether it gives clean chit to the assessee or not will be dealt later.

e. The Hon'ble Supreme Court's observations during the proceedings for quashing the charge-sheet are straightway admissible. It refers to prima facie criminal case against assessee, the observations therein being on the same subject matter and the same person, based on same material, it is an admissible evidence.

f. The Chargesheet filed by the CBI is admissible evidence. It refers to various enquiries and new facts. The contents and material therein has been held by the Supreme Court to constitute a prima facie criminal case against assessee. The information contained in the charge sheet being from a Central govt. investigative agency, it is admissible and can be relied to come to ascertainment of proper facts.

g. Photo copies of Hindu Newspaper are part of the CBI charge sheet and are thus admissible as material available on record, subject to corroboration..

6.9. In view of above observations, we have no hesitation to hold that the all this material available on record is admissible in Income tax proceedings

and the lower Authorities committed no mistake in taking cognizance thereof. The issue of corroboration will be dealt with at appropriate places.

SECONDARY EVIDENCE ADMISSIBLE IN INCOME TAX PROCEEDINGS:

6.10. In the case of Vimal Chandra Golecha V. ITO (1982) 134 ITR 119 (Raj.), the Hon'ble Rajasthan High Court, in respect admissibility of photo copies of documents, which are used against an assessee and the burden of proof on the Department, has observed as under:

".... It would thus be seen on the facts, as established on record, that the petitioner was afforded full opportunity of being heard before the impugned order of assessment was made. Natural justice which was said to have been violated is not so rigid and inflexible a concept as to insist invariably that the person concerned must be shown the original documents which are required to be explained by him. It is well settled that the requirements of natural justice depend on the circumstances of the case, the nature of the enquiry, the statute under which the Tribunal is acting and the subject-matter to be dealt with. In the context of the Act, the nature of the enquiry under section 142 and the fact that the original documents were said to be in the possession of a foreigner residing in a foreign country, the demands of natural justice were fully met by supplying the assessee with photo copies of the documents in the possession of the assessing authority. He denied the genuineness and correctness of these documents by seeing the photo copies. Had he seen the originals, he could have done no better than denying their genuineness and correctness. What was the value of these photo copies as 'material' for the reassessment of the petitioner's income was a question which had better be left at this stage to the professional judgment of a hierarchy of Income-tax authorities, with the Tribunal at the apex. The petitioner had already filed an appeal against the order of reassessment, which was pending. If still not satisfied, he would be entitled to appeal to the Tribunal. If the decision of the Tribunal also fails to satisfy him, he would be entitled to apply to the

Tribunal for a reference on questions of law to the High Court. If the Tribunal refuses to make a reference, he would be entitled to apply directly to the High Court for an order to the Tribunal directing it to state a case. Thus there was no reason to entertain the writ petition at this stage.

For all these reasons, the writ petition was wholly unsustainable, and was, therefore, dismissed in limine.

SUSPICIOUS AND DIBIOUS TRASANCTION HOW TO BE DEALT WITH:

6.11. The tax liability in the cases of suspicious transactions, is to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/ evidence available with AO.

6.12. In the case of Sumati Dayal V. CIT (1995) 80 Taxman 89 (SC), the Hon'ble Supreme Court has dealt with the relevance of human conduct, preponderance of probabilities and surrounding circumstance, burden of proof and its shifting on the Department in cases of suspicious circumstances, by following observations:

“..... It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted, can be used against him by holding

that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.

..... Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

CIRCUMSTANTIAL EVIDENCE HOW TO BE USED

6.13. It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact.

In the appreciation of circumstantial evidence, the relevant aspects, as laid down from time to time are —

(1) the circumstances alleged must be established by such evidence, as in the case of other evidence ;

(2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence.

(3) although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced ; some of these links may have to be inferred from the proved facts ;

(4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case.

(5) The circumstantial evidence can, with equal facility, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth."

6.14. It will also be worthwhile to consider the nature of burden of proof on the AO for proving a fact or circumstance in the income tax proceedings. The questions raised about the tax liability by the AO are to be answered by the assessee by furnishing reasonable and plausible explanations. If assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable. Courts generally will not interfere with such estimate of facts, unless the inferences or estimates are perverse or capricious.

6.15. The Assessee's technical contentions about admissibility and reliance on material available on the AO's record are in the nature of contentions challenging criminal or civil liabilities in a court of law. We are dealing with a process of adjudication of assessee's tax liability i.e. assessment under Income Tax Act rather than conducting criminal or civil court proceedings.

As held by the Hon'ble Supreme Court in the case of S.S. Gadgil (supra) no 'lis' is involved in adjudication of tax liability. The Assessee's contention that there was no new material before the AO after the CIT(A)'s setting aside order cannot be accepted. New information and material did indeed come on record. In our view, in a sensitive matter like this, even a single clue or revelation can be of great importance. To reverse the order of the AO on this technical plea will amount to taking a lopsided view of the proceedings. Besides, the JPC has underlined the importance of Reports of investigation agencies like CBI, DRI, ED whose were in the offing, as the relevant investigations were in process. In view of these observations, we do not accede to the assessee's pleas in this behalf. The Assessee's contentions and objections in this behalf that the material available on record was not admissible as evidence and that it cannot be relied on by the AO, are devoid of any merit and are rejected outright.

JPC'S FINDINGS AND THEIR EVIDENTIARY VALUE IN TAX PROCEEDINGS

6.16. We may advert to the findings of the JPC, which the assessee pleads, give him a clean chit:

- i) From the JPC Report, it is clear that the Swedish National Audit Bureau or 'SNAB' furnished its Report, which was forwarded by the Swedish Embassy in India to the Govt. of India. The relevant part is as under:

"It may be seen from the report that AB Bofors claims no middlemen were involved during the final phase of the negotiations but that costs did occur in connection with the winding up of dealing with earlier local agents. These costs were finally settled during 1986. According to the National Audit Bureau Investigation, an agreement exists

on settlement of commission subsequently to the howitzer deal and information exists that considerable sums have been disbursed referring to this contract. There have been other payments made by Bofors during the period in question, the purpose and recipient of which it has not been possible to clarify with the aid of the data available to the National Audit Bureau.

Only AB Bofors is in a position to give a full account of its own payments. The Government has, therefore, again urged AB Bofors to assist in shedding light on the matter."

ii) Consequent to this Report, the Govt. of India, through the Defence Secretary, addressed a letter to the President of Bofors, Mr. Per Ove Morberg, on 16-7-1987, which, inter alia, stated as under:

"In the context of your aforesaid repeated assertions, we are constrained to observe that:

(i) The report of the Swedish National Audit Bureau establishes:

- (a) That an agreement exists between M/s. AB Bofors and concerning the settlement of commission subsequently to the FH-77 deal;
- (b) That considerable amounts have been paid subsequently to among others, M/s AB Bofors previous agents in India;
- (c) That to wind up previous arrangement, costs of 2-3% of the order sum, i.e. SEK 170-250 million were incurred and the final payments were made during 1986; and
- (d) Payments totaling SEK 32 million were also made in Nov. -Dec. 1986.

(ii) The aforesaid payments are in addition to payment at the rate of SEK 100,000 per month (i.e. SEK 1.2

million only during 1986) openly paid/ payable to M/s Anatronc General Corporation, New Delhi, through an Indian Bank, for administrative services rendered to your company since January, 1986.

Para 5 of this letter reads as under:

"In the aforesaid context, M/s AB Bofors have not only gone against our explicit wishes but have also violated the solemn assurances given to us by your company. Consequently, we call on your company to furnish us complete information regarding the transactions in para 4(1) above and specifically, all information in regard to the following aspects:

- (i) The precise amounts which have been paid and the amounts which are due to be paid by you by way of commission, secret payments, etc. in connection with the Indian contracts;
- (ii) The recipients of such amounts, whether they be persons or companies, and in the case of latter, their proprietors/ presidents/ directors, and place of incorporation.
- (iii) The services rendered by such persons/ companies with reference to which such amounts have been paid;
- (iv) Copies of the contracts, agreements and correspondence between your company and such recipients; and
- (v) All other facts, circumstances and details relating to these transactions, in your possession."

iii) Further, later correspondence followed, in which, M/s Bofors instead of giving names or details of the recipients or any clue, only reiterated that the termination costs/ winding up costs were not paid to