

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 8511 of 2019

A.K.M. Alamgir Hossain
.....Appellant

-Vs-

The State and another
Mr. Syed Mizanur Rahman, Advocate with
Ms. Zinat Akhter, Advocate
..... For the appellant

Mr. S.M. Golam Mostofa Tara, DAG with
Mr. A. Monnan, A.A.G

....for the State

Mr. Shaheen Ahmed, Advocate

....For the respondent No. 2

**Heard on 20.11.2023, 12.12.2023, 02.01.2024,
09.01.2024 and 10.01.2024**

Judgment delivered on 14.01.2024

This appeal under section 10 of the Criminal Law Amendment Act, 1958 is directed challenging the legality and propriety of the impugned judgment and order of conviction and sentence dated 11.07.2019 passed by the Special Judge, Court No. 7, Dhaka in Special Case No. 21 of 2017 corresponding Metropolitan Special Case No. 212 of 2016 arising out of Ramna Police Station Case No. 22 dated 07.06.2012, corresponding ACC G.R. No. 100 of 2012 convicting the appellant under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 and sentencing him under each section to suffer rigorous imprisonment for 03 years and to pay a fine of Tk. 10,000, in default, to suffer imprisonment for 6 months which will run

concurrently and confiscating the assets of Tk. 68,41,721 in favour of the State.

The prosecution case, in short, is that P.W. 1 Md. Mahamud Hasan, Deputy Director, Anti-Corruption Commission vide memo dated 16.08.2010 issued a notice upon the accused AKM Alamgir Hossain under section 26(1) of the Anti-Corruption Commission Act, 2004 to submit the statement of his assets and the assets of his wife. Pursuant to the said notice, the accused AKM Alamgir Hossain submitted statement of his assets on 22.08.2010. The said Md. Mahamud Hasan was appointed as inquiry officer to inquire as regards the statement of assets dated 22.08.2010 submitted by the accused. In the statement of assets, the accused stated that he acquired total assets of Tk. 98,10,221 in his name and the wife of the accused also acquired assets valued at Tk. 33,62,020 and they also jointly acquired assets of Tk. 7,57,000. Thus the accused along with his wife acquired total assets of Tk. 1,39,29,241. In the statement of assets, it has been mentioned that the value of 8.25 decimals of land along with 02 storied building purchased by deed No. 6028 was Tk. 30,00,000 but in the assessment report made by the engineer the construction costs of the said house was assessed Tk. 78,25,000 and the total value of the 8.25 decimals of land along with the building was assessed (Tk. 78,25,000+2,20,000)=Tk. 80,45,000. The accused concealed total Tk. 48,25,000 in the house. In the statement of assets, the accused also mentioned that he purchased flat No. 4A, (1394.13 square feet), House No. 53, Road No.2, Sector-13 vide register deed No.27629 valued at Tk. 11,66,000 along with registration cost but the engineer assessed the value of the flat at Tk. 16,91,355 and Tk. 5,25,355 was concealed in the said flat. The accused along with his wife purchased electronics goods valued at Tk. 1,90,000 but the engineers assessed the value of the electronic goods at Tk. 5,17,000. Therefore, Tk. 3,27,000 was

concealed in the electronics goods. During the inquiry, it was found that the accused opened 03 policies being Nos. (1). BD 1040636 (2). BDEP31854 (3). BD1040638. Policy No. 1 and 2 were opened in the name of accused AKM Alamgir Hossain and till 22.08.2010, Tk. 1,22,490 and Tk. 2,620 were deposited for the policy Nos. 1 and 2 respectively. Policy No. 3 was opened in the name of his wife and Tk. 32,895 was deposited in the said policy. The accused in his statement of assets concealed said 02 policies valued at Tk. 1,58,005. The accused submitted income tax return on 26.08.2010 with Tax Circle No. 5, Taxes Area-1, Dhaka in the year 1998-1999. In the income tax return, the total assets of the accused have been mentioned at Tk. 33,37,000 which is his net lawful income. Ms. Kuhinur Begum, the wife of accused AKM Alamgir Hossain, in her income tax return, stated that she acquired net assets of Tk. 14,90,000. Therefore, her net assets are Tk. 14,90,000+2078000, total Tk. 35,68,000. In the statement of assets submitted by the accused and his wife joint assets had been shown at Tk. 1,39,241. Therefore, the accused and his wife acquired total assets valued at Tk. (13929241-6905000)=Tk.70,24,241 beyond his known source of income.

After lodgment of the FIR, P.W. 1 Md. Mahamud Hasan took up the investigation of the case and he recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and thereafter he was transferred. Subsequently P.W. 11 Md. Zulfikar Ali, Deputy Director of the Anti-Corruption Commission was appointed as the investigating officer. During the investigation, he also recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and seized the income tax record of the accused. After completing the investigation, the investigating officer found the truth of the allegation made against the accused and obtained permission on 14.12.2015 to submit charge sheet and accordingly, he submitted

charge sheet on 10.02.2016 under sections 26(2) and 27(1) of the Anti-Corruption Commission Act No. 2004 against the accused.

The Metropolitan Senior Special Judge, Dhaka by order dated 14.08.2016 took cognizance of the offence against the accused under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004 and transferred the case on 03.08.2017 to the Special Judge, Court No. 7, Dhaka. During the trial, the charge was framed on 10.09.2017 against the accused under sections 26(2) and 27(1) of the Anti-Corruption Commission Act, 2004. At the time of framing the charge, the accused was absconding for which the charge framed against the accused could not be read over and explained to him. The prosecution examined 11 witnesses to prove the charge against the accused. The defence did not cross-examine the P.Ws. After concluding the trial, the trial court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Md. Mahamud Hasan is Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that the accused AKM Alamgir Hossain is the proprietor of Protik Travel and Tourism. The Anti-Corruption Commission issued notice on 25.07.2010 upon the accused to submit the statement of his assets and his wife. Pursuant to the said notice, accused AKM Alamgir Hossain submitted a statement of his assets on 22.08.2010. On 14.09.2010 he was appointed as inquiry officer. In the statement of assets dated 22.08.2010, the accused stated that he acquired total assets of Tk. 98,10,221 and his wife acquired total assets of Tk. 33,62,020. They also jointly acquired assets of Tk. 7,57,000. Thus the accused and his wife acquired total assets of Tk. 1,39,29,241. During inquiry about the statement of assets submitted by the accused, it was found that the accused and his wife jointly purchased 8.25 decimals of land along

with two storied building by registered deed. The total value of the said land was mentioned at Tk. 3000000+21,20,000, total Tk. 32,20,000 along with registration costs. The engineer after assessment of said land along with the building assessed the value of the said house at Tk. 80,45,000. The accused concealed Tk. 48,25,000 in the said house. In the statement of assets he stated that he purchased flat No. 4A, House No. 53, Road No. 2, Sector-13, Uttara, Dhaka vide register deed No. 27629. The value of the said flat was mentioned at Tk. 11,66,000. The engineer assessed the value of the said flat at Tk. 16,91,355. The accused concealed Tk.5,25,355 in the said flat. The accused stated that he purchased electronics goods valued at Tk. 1,90,000. The engineer assessed the value of electronic goods at Tk. 5,70,000 and he concealed Tk. 3, 27,000 in the electronics goods. It is found that the accused opened 03(three) insurance policies with Metlife Alico i.e. (1). Alico Policy No. BD1040363 and BDEP31854. Tk. 1,22,490 and 2,620 respectively were paid as premiums. The wife of the accused opened policy No. BD1040638 and Tk. 32,895 was paid as premium. The accused concealed the said policies valued at Tk. 1,58,005 in the statement of assets dated 22.08.2010. In the income tax return submitted on 26.08.2010 for the first time in the year 1998-1999, the accused mentioned his net assets at Tk. 33,70,000. In the return submitted by his wife with Tax Circle No. 5, Tax Zone-1, Dhaka for the year 1998-2010 her total assets have been mentioned at Tk. 35,68,000. In the said statement of assets submitted by the accused, it has been mentioned that the accused along with his wife acquired total assets of Tk. 1,39,29,241. In the income tax return of the accused and his wife, they stated that they acquired total assets of Tk. 33,37,000+35,68,000, total Tk. 69,05,000. Therefore, he acquired total assets of Tk. 1,39,29,241-69,05,000=70,24,241 beyond his known source of income. The accused concealed total Tk. 58,35,360. After

inquiry, he recommended to lodge the FIR and the Anti-Corruption Commission vide memo No. 13462 dated 28.05.2012 had approved for lodging the FIR. He proved the FIR as exhibit-1 and his signature as exhibit-1/1. He proved the statement of assets dated 22.08.2010 as exhibit-2. He proved the letter of approval for inquiry dated 14.09.2010 as exhibit-3. The accused was absconding.

P.W. 2 SM Akter Hamid Bhuiyan is the Deputy Director, Anti-Corruption Commission, Dhaka. He stated that in 2010 he was posted as Assistant Director, Anti-Corruption Commission, Dhaka. On 25.04.2010, he was entrusted with the inquiry as regards the property of accused AKM Alamgir Hossain. After inquiry, he recommended to serve a notice upon the accused under section 26(1) of the Anti-Corruption Commission Act, 2004 to submit the statement of his assets and he submitted the report on 06.06.2010. The accused was absconding.

P.W. 3 Md. Muazzem Hossain is the Executive Engineer of the Public Works Department. He stated that in 2010, he was the Sub-Divisional Engineer at Public Works Department, Gazipur. The Anti-Corruption requested to report about holding No. 44, Arichpur, Tongi, Gazipur. At the time of inspection of the said house on 07.10.2010 owner of the house Alamgir Hossain, Mahmud Hasan, Deputy Director, Anti-Corruption Commission, Caretaker Md. Alamin of the said house and Sub-Assistant Engineer Md. Aminul Islam, Public Works Department were present. On 27.10.2010 they visited the house and submitted the report on 14.12.2010. The total value of the civil construction work was Tk. 78,25,000. The value was assessed following the rate of schedule of PDB published in 2008. Subsequently, the Anti-Corruption Commission vide Memo No. 135 of 2013 requested to assess the value of the said house following the rate of the

schedule of the Public Works Department published in 1996. Subsequently, on 21.05.2013 the value of the said house was reassessed and the total construction value of said house was assessed Tk. 50,88,169. He submitted the report on 21.05.2015. He proved the report dated 21.05.2013 as exhibit 4 and his signature on the report dated 21.05.2013 as exhibit-4/1.

P.W.4 Md. Mahbubur Rahman is the Deputy Secretary, Bangladesh Economic Zone Authority, Office of the Prime Minister, Dhaka. He stated that on 28.10.2010 he was posted as Sub-Divisional Engineer, Public Works Department, E/S Sub-Division, Mirpur, Dhaka. At that time, the ACC vide memo No. 19116 dated 07.10.2010 requested him to assess the electronics goods of flat No. 4A, House No. 53, Road No.2, Sector-13, Uttara belonged to the accused. On 28.10.2010 they visited the said house. At that time, accused AKM Alamgir Hossain, Md. Mahmud Hasan, Deputy Director of the Anti-Corruption Commission and Lutfar Rahman, Sub-Assistant Engineer were present there. After physical inspection, they assessed the market value of the goods at Tk. 5,17,700. He proved the valuation report(four pages) as exhibit-5 and his signature on 03 pages of the report as exhibits-5/1, 5/2, 5/3. The accused was absconding.

P.W. 5 Md. Lutfar Rahman is the Sub-Assistant Engineer, Public Works Department, Kishoregonj. He stated that on 28.10.2010 he was posted at E/M Sub-Division-16 Mirpur, Dhaka as Sub-Assistant Engineer. Pursuant to the letter issued by the ACC, he along with Md. Mahabubur Rahman (P.W. 4) visited the flat of accused AKM Alamgir Hossain situated at Uttara, Dhaka and assessed the value of electronic goods and submitted report. He proved his signatures as exhibits-5/4, 5/5, 5/6.

P.W. 6 Monir Hossain is the Senior Officer, Metlife Alico. He stated that on 16.05.2013 following the requisition of Md. Mahmud Hasan, Deputy Director, Anti-Corruption Commission along with Assistant Manager Hajrat Ali went to the Head Office of Anti-Corruption Commission and Md. Mahmud Hasan, Deputy Director of the Anti-Corruption Commission seized the documents and signed the seizure list. He proved the seizure list as exhibit-6 and his signature on the seizure list as exhibit-6/1.

P.W. 7 Mainul Erfan is the Assistant Commissioner of Tax, Taxes Zone-1, Taxes Circle-21, Dhaka. He stated that on 19.10.2015 at 11.00 am he along with his colleague Shafiqul Islam and Shankar Das along with the documents went to the Head Office of the Anti-Corruption Commission and the investigating officer seized those documents mentioned in serial No. 5 of the seizure list. He proved the seizure list as exhibit-7 and his signature on the seizure list as exhibit-7/1. Subsequently, the documents were handed over to Shafiqul Islam and he signed the Zimmanama(bond). He proved the Zimmanama as exhibit-8 and his signature as exhibit-8/1.

P.W. 8 Md. Hazrat Ali is the Assistant Manager, Metlife Alico, Head Office, Dhaka. He stated that on 16.05.2013 following the requisition of Mahmud Hasan, Deputy Director, Anti-Corruption Commission, he along with the documents went to the Head Office of the Anti-Corruption Commission and the investigating officer seized documents and subsequently returned those documents to him based on the Zimmanama(bond). He proved the documents as material exhibit-I and the Zimmanama(bond) as exhibit-9. He proved his signature on the Zimmanama(bond) as exhibit-9/1.

P.W. 9 Shankar Chandra Baroi is the Head Assistant, Office of the Deputy Commissioner, Taxes Circle-13(Keranigonj), Taxes Zone-

1, Dhaka. He stated that on 19.10.2015 at 11.00 am following the requisition of the Anti-Corruption Commission, he along with Mainul Erfan, Deputy Director of Taxes went to the Head Office of the Anti-Corruption Commission. The investigating officer seized documents mentioned in the serial No. 5 of the seizure list from Mainul Erfan. He signed the seizure list. He proved his signature on the seizure list as exhibit-7/2. The seized documents were handed over to the Head Assistant Shafiqul based on Zimmanama(bond). He proved his signature on the Zimmanama(bond) as exhibit-8/2.

P.W. 10 Md. Shafiqul Islam is the Head Assistant, Office of the Deputy Commissioner of Taxes, Taxes Circle No. 4, Taxes Zone-1, Segunbagicha, Dhaka. He stated that on 19.10.2015, he was posted at Taxes Circle-21, Taxes Zone-1, Dhaka. At that time, following the requisition of the Deputy Director, Anti-Corruption Commission, he went to the Office of the Deputy Director, Anti-Corruption Commission, Head Office along with the tax file of the accused AKM Alamgir submitted for the year 1998-1999 to 2014-2015. The Deputy Commissioner of Taxes presented those documents to the investigating officer. He seized those documents and prepared the seizure list. He signed the seizure list. He proved his signature on the seizure list as exhibit-7/3. Subsequently, the seized documents were handed over to him based on the Zimmanama(bond). He proved the seized documents as material exhibit II series. He proved his signature as exhibit-8/3.

P.W. 11 Md. Zulfikar Ali is the Director of the Anti-Corruption Commission, Barishal Division. He stated that on 22.02.2015 he was posted as Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He was appointed as the investigating officer. Earlier Md. Mahamud Hasan, Deputy Director, ACC also partly investigated the case. On 19.10.2015 at 11.00 am Md. Saifur Rahman presented the

income tax returns of the accused submitted for the year 1998-1999 to 2014-2015 and he seized those documents and handed over to the custody of Shafiqul Islam. He signed the seizure list as exhibit-7/4. He proved his signature on the Zimmanama (bond) as exhibit-8/4. In the statement of assets dated 22.08.2010, the accused mentioned that he acquired total assets of Tk. 98,10,221 and his wife acquired total assets of Tk.37,00,000 and he along with his wife jointly acquired assets of Tk. 3,78,500. They acquired total assets of Tk. 1,01,88,721 but as per income tax record as of 22.05.2010 he acquired total assets of Tk. 33,37,000. Therefore, he acquired total assets of Tk. 68,41,721 beyond his known source of income. He also showed the total expenditure of the construction cost of the house at Gazipur of his part at Tk. 16,20,000, but he spent Tk. 25,44,084.50. He concealed Tk. 94,442.25 in the said house. In the statement of assets, the accused mentioned that he purchased total electronics goods valued at Tk. 1,90,000 but the actual value of the electronic goods was Tk. 5,17,000. He concealed total Tk. 3,27,000 in electronics goods. Moreover, he concealed total Tk. 1,58,505 of 03 policies of the Metlife Alico along with his wife. The accused concealed Tk. 125110. Thus he concealed the total assets of Tk. 12,22,652.25 and illegally acquired total assets of Tk. 68,41,721 beyond the known source of his income for which he submitted the charge sheet with prior approval of the authority. He proved the letter of approval dated 14.12.2012 as exhibit 10.

The learned Advocate Mr. Syed Miazanur Rahman appearing on behalf of the appellant submits that since 1996 the accused AKM Alamgir Hossain served in Malaysia for about 19 years and earned foreign remittances and started his business in Bangladesh. After returning home, all his assets have been shown in the income tax return filed before the income tax authority and the income tax department duly assessed the income shown in return filed by the accused and

accepted the tax. He did not acquire any property disproportionate to his known source of income. He further submits that since the income tax authority assessed the income of the accused, if any irregularity or illegality is found in the return filed by the accused only the income tax authority is legally empowered to take action against the accused under the Income Tax Ordinance, 1984. He also submits that the accused in his statement of assets (exhibit-2) had given a detailed description of his assets and inadvertently could not mention the 02(two) policies opened with Metlife Alico for a negligible amount i.e. Tk. 1,25,110 and the trial court without applying judicial mind and also without proper assessment and evaluation of the evidence of the prosecution witnesses illegally passed the impugned judgment and order convicting the accused. The learned Advocate having produced the office order dated 30.01.2017 issued by the Head Office, Anti-Corruption Commission submits that following the decision reported in 66 DLR AD (2014) 236 para 19 (C.P. No. 1658-59 of 2008 and C.P.No. 117 and 210 of 2011) the Anti-Corruption Commission issued a circular stating that after the assessment of the income tax return of any person by the income tax department, no other department of the Government shall raise any question regarding the assets assessed by the income tax department. The learned Advocate also relied on a decision made in the case of Md. Hafiz Ibrahim vs. The State and another reported in 7CLR(HCD)(2019) 27.

Learned Advocate Mr. Shaheen Ahmed appearing on behalf of respondent No. 2 (ACC) submits that the accused in his statement of assets (exhibit-2) submitted on 22.08.2010 pursuant to the notice under section 26 (1) of the Anti-Corruption Commission Act, 2004 concealed total assets of Tk. 12,22,652.25 including 02 policies of Tk. 1,25,000. In the income tax return, the accused disclosed his total assets valued at Tk. 33,37,000 but the engineer of the Public Works Department

assessed the value of the assets mentioned in the statement of assets (exhibit-20 at Tk. 1,01,88,721. Therefore, he acquired total assets amounting to Tk. 6841721 beyond his known source of income. Thereby the accused A.K.M. Alamgir Hossain committed offence under sections 26(1) and 27(2) of the Anti-Corruption Commission Act, 1974. He also relied on the decision reported in 66 DLR (AD) 236 para 20.

I have considered the submission of the learned Advocate Mr. Syed Mizanur Rahman who appeared on behalf of the appellant and the learned Advocate Mr. Shaheen Ahmed who appeared on behalf of respondent No. 2 (ACC), perused the evidence, the impugned judgment and order passed by the trial court and the records.

On perusal of the records it appears that pursuant to the notice issued under section 26(1) of the Anti-Corruption Commission Act, 2004 the accused submitted a statement of his assets on 22.08.2010 (exhibit-2) to the Anti-Corruption Commission. In the said statement, it has been mentioned that he along with his wife purchased 8.25 decimals of land and constructed two storied building thereon. The total value of the land and the construction costs along with the registration fees was mentioned at Tk. 32,20,000 and the engineer of the Public Works Department assessed the construction costs of the said house at Tk. 50,88,769 and as per the report of the engineer of the Public Works Department he concealed Tk. 934084.50 of his part in the said house. He also purchased a flat measuring 1394.13 square feet at Uttara valued at Tk. 11,66,000. The engineer of the Public Works Department assessed the value of the said flat at Tk. 16,91,351. As per the report of the Public Works Department, the accused AKM Alamgir Hossain concealed total Tk. 5,25,355 in the said flat. The accused purchased the electronics goods amounting to Tk. 1,90,000 and the Engineer of the

Public Works Department assessed the value of electronics goods at Tk. 5,70,000. As per the report of the Engineer, the accused concealed Tk. 3,27,000 in the said electronics goods. During the investigation, the investigating officer found that the accused opened 02 policies with Metlife Alico for Tk. 1,22,490 and Tk. 2,620 respectively, total Tk. 1,25,110. The said policies were not mentioned in the statement of assets dated 22.08.2010 (exhibit-2).

On perusal of the statement of assets dated 22.08.2010 (exhibit-2) it further appears that the accused stated that he served in Malaysia and earned foreign remittance and invested the foreign remittance in Bangladesh for business. The prosecution did not dispute the statement made by the accused that he served in Malaysia and earned foreign remittances and invested foreign remittances in Bangladesh for business. The case of the prosecution is that in the statement dated 22.08.2010(exhibit-2), the accused concealed his assets and the two policies of Metlife Alico. In the income tax return submitted by the accused, the total assets have been shown at Tk. 33,37,000 but the engineer of the Public Works Department assessed the total value of the assets of the accused at Tk. 1.01,88,721. Thus he acquired total assets of Tk. 68,41,721 beyond his known source of income. Furthermore, the accused concealed the two policies in the statement of assets submitted pursuant to the notice served under section 26 (1) of the Anti-Corruption Commission Act, 2004 for Tk. 1,25,110.

In section 27 of the Anti-Corruption Commission Act, 2004, the legislature used the words “ অসাধু উপায়ে অর্জিত হইয়াছে এবং তাহার জ্ঞাত আয়ের উৎসের সহিত অসংগতিপূর্ণ”. No definition or interpretation has been given of those words in the Anti-Corruption Commission Act, 2004. The accused simply stated in the statement of assets (exhibit-2) that he served in Malaysia and earned foreign remittances and invested the

same in Bangladesh for business. The above statement of the accused made in the statement of assets (exhibit-2) was neither disputed by the prosecution nor any evidence contrary to his statement has been proved by the prosecution. Therefore, I am of the view that the accused did not acquire any property by any dishonest means. It is found that except two policies opened with Metlife Alico, all the assets mentioned in the statement of assets dated 22.08.2010 (exhibit-2) were also mentioned in the income tax return filed by the accused before the income tax authority. No evidence was adduced by the prosecution that the income tax department did not accept the return of the accused. Therefore, it is to be presumed that the income tax return filed by the accused was accepted by the income tax department and tax was realized on the income of the accused.

In the above conspectus, it is relevant here to quote office order dated 31.01.2017 issued by the Anti-Corruption Commission, Head Office, Dhaka which runs as follows;

“দুর্নীতি দমন কমিশন
প্রধান কার্যালয়
১ সেগুনবাগিচা, ঢাকা।
www.acc.org.bd

স্মারক নং দুদক/প্রশাঃ ও লজিঃ/৬৩/২০০৭(অংশ-৪)/৩৫৬৬(১০)তারিখঃ ৩০/০১/২০১৭

বিষয়ঃ সম্পদ সংক্রান্ত অভিযোগের অনুসন্ধান/মামলার তদন্তের ক্ষেত্রে যথাযত নীতি অনুসরণ।

সূত্রঃ কমিশনের মানিলন্ডারিং অনুবিভাগের অনিস্পন্ন বিষয়াদি শাখার নথি নং সি/৩৯/২০০০/মেট্রো/অ:বি:সেল-২

উপর্যুক্ত বিষয়ের প্রেক্ষিতে জানানো যাচ্ছে যে, ৬২ ডিএলআর (এডি) (২০১০)২৭৭ অনুযায়ী সিপি নং ১৬৫৮-৫৯/২০০৮ এর প্রেক্ষিতে আপীল বিভাগের রায় মোতাবেক আলাদা আয়কর দাতার ক্ষেত্রে আলাদা সম্পদ বিবরণী নোটিশ জারী না করে জ্ঞাত আয় বহির্ভূত সম্পদ অর্জনের অভিযোগ/সহযোগিতার অভিযোগে দায়া করা যাবে না এবং সিপি নং ১১৭ ও ২১০/২০১১ এর রায় অনুযায়ী আয়কর বিভাগ বা সরকারের অন্য কোন বিভাগ কর্তৃক যদি পরিমাপ বা হিসাব গৃহীত হয় তবে সরকারের অন্য কোন বিভাগ হতে এ বিষয়ে প্রশ্ন তোলা যাবে না। উক্ত দু'টি রায়ে আপীল বিভাগ কর্তৃক স্থিরীকৃত দিক নির্দেশনা অনুযায়ী আয়কর দাতা জ্বী'র আয়কর বিভাগ কর্তৃক গৃহীত সম্পত্তি বিবেচনায় নিয়ে স্বামীর বিরুদ্ধে জ্ঞাত আয় বহির্ভূত সম্পদ

অর্জনের অভিযোগে মামলা চলিয়ে নেয়ার সুযোগ না থাকায় সূত্রোক্ত নথির মামলাটিতে কমিশন কর্তৃক এফ.আর.টি দাখিলের প্রস্তাব অনুমোদিত হয়।

উক্ত মামলার নজীর বিবেচনায় সম্পদ সংক্রান্ত অভিযোগের অনুসন্ধান/মামলার তদন্তের ক্ষেত্রে যথাযত পদ্ধতি/নীতি অনুসরণ করার জন্য সংশ্লিষ্ট সকলকে নির্দেশক্রমে অনুরোধ করা হলো।

কাজী শফিকুল আলম

পরিচালক (প্রশাসন)

ফোন: ৯৩৫২১১৫

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At this stage, it is relevant here to cite a decision made in the case of The State vs. Faisal Morshed Khan reported in 66DLR (AD) 236 para 19 judgment dated 05.05.2014 passed in CPLA No. 117 of 2011 and CPLA No. 210 of 2011. In the referred case our Apex court considered the decision made in the case of Dr Mohiuddin Khan Alamgir vs. Anti-Corruption Commission, reported in 15BLC 107 and has held that;

“...the assessment made by the PWD officials would be of no avail when the assessment of valuation came up for consideration before the Income Tax Department which indisputably passed an order on the assessment of valuation. The assessment of valuation made by the Income Tax Department has legal validity which should not be questioned by another independent government department unless the Income Tax Department reviews its own assessment. There cannot be a conflicting exercise of power between the two independent departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause overlapping exercise of jurisdiction between the two independent departments of the Government.

The officials of the Income Tax Department exercise their power under a statute”.

Subsequently, in the case of Md. Hafiz Ibrahim vs. the State reported in 7CLR 27 judgment dated 06.02.2018 considering the earlier decision made in the case of Faisal Morshed Khan (supra) the High Court Division after elaborate discussion at para 147 has held that;

“There are so many businessmen and professionals who legally earn a lot of money, but do not show it in their tax files just to evade tax. Such evasion, if detected, he/she may be liable to be prosecuted under the penal provisions of the Income Tax Ordinance, 1984, but it does not constitute any offence of corruption or that under section 27 of the Act V of 2004.”

The judgment in the case of Md. Hafiz Ibrahim vs. The State and another reported in 7CLR (HCD)(2019) 27 was passed by a Division Bench of this court. Therefore, there is no scope to arrive at a different view by this bench. The view of the High Court Division in the referred case is that section 27 of the Anti-Corruption Commission Act, 2004 is only applicable in the case of a public servant.

Because of the above facts and circumstance of the case, evidence, findings and the proposition, I am of the view that the Anti-Corruption Commission is not legally empowered under section 27 of the Anti-Corruption Commission Act, 2004 to re-assess the income and assets of a private individual through the engineer of Public Works Department who’s income and assets has been assessed by the income tax authority. Section 27 of the said Act is only applicable to the public servant and his/her dependants. Admittedly, the appellant is a businessman and during his long service in Malaysia, he earned foreign remittances and invested in Bangladesh. No evidence has been adduced by the prosecution that he earned/acquired any property by any illegal means. The investigating officer(P.W. 11) without following any

objective criteria and without determining the total income and expenditure of the accused AKM Alamgir Hossain mechanically concluded that the accused acquired total assets of Tk. 68,41,721 beyond his known source of income.

Since the income tax return filed by the accused has been assessed and accepted by the income tax authority under the Income Tax Ordinance, 1984, if any evasion of tax is detected only the income tax authority is legally empowered to take action against the accused under the Income Tax Ordinance, 1984. The Anti-Corruption Commission is not legally empowered to raise any objection as regards the assets acquired by any private individual whose assets and income tax return has been assessed by the income tax authority.

Admittedly, the accused did not mention the policy Nos. BD1040363 and BDEP31854 in the statement of assets dated 22.08.2010 (exhibit-2) and that Tk. 1,22,490 and 2,620 respectively were paid as premiums. During the trial, the accused was absconding. The defence did not cross-examine the prosecution witnesses. Therefore, the evidence of prosecution witnesses regarding the concealment of the said two policies remains uncontroverted. Therefore, I am of the view that the accused committed an offence under section 26(2) of the Anti-Corruption Commission Act, 2004.

As regards the sentence passed by the trial court, I am of the view that the accused AKM Alamgir Hossain had given a detailed description of his assets in the statement (exhibit-2) along with assets acquired by his wife. The failure of the accused regarding the disclosure of two Metlife Alico policies relates only Tk. 1,25,110. Therefore, I am of the view that the ends of justice would be best served, if the sentence passed by the trial Court under section 26(2) of the Anti-Corruption Commission Act, 2004 is modified as under:

The accused A.K.M Alamir Hossan is found guilty of the offence under section 26(2) of the Anti-Corruption Commission Act, 2004 and he is sentenced to suffer imprisonment already undergone and a fine of Tk. 10,000. He is found not guilty to the charge framed under section 27 (1) of the Anti-Corruption Commission Act, 2004.

In the result, the appeal is allowed in part. The sentence passed against the accused A.K.M. Alamgir Hossain under section 26(2) of the Anti-Corruption Commission Act, 2004 by the trial court is hereby modified. He is acquitted from the charge framed against him under section 27(1) of said Act.

Send down the lower Court's record at once.