

Investigation of Corruption Cases

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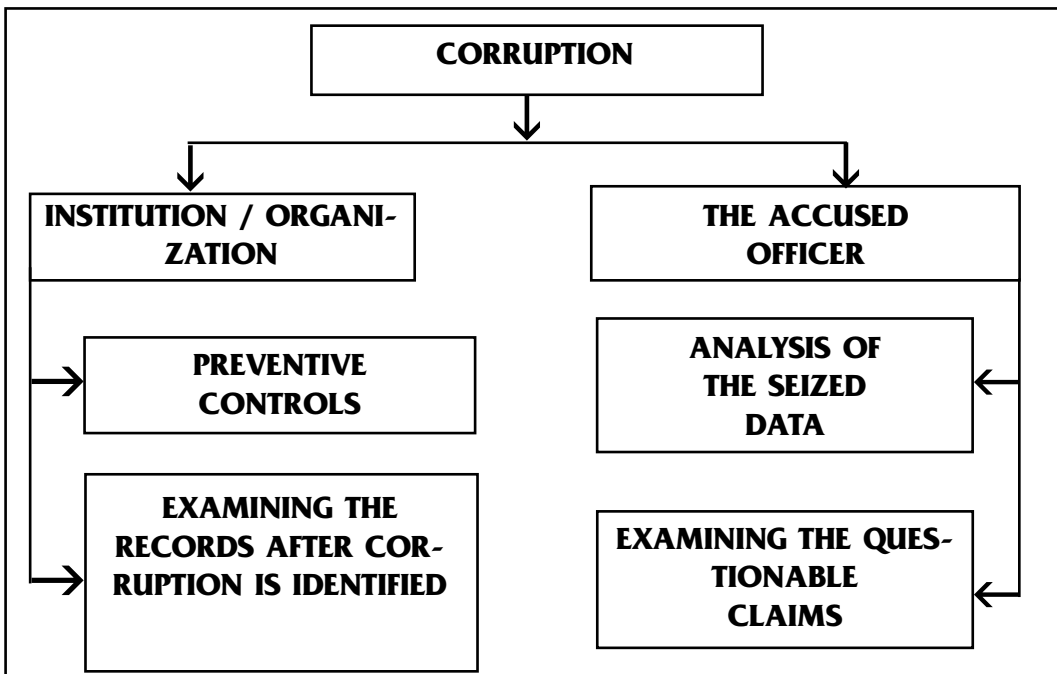
CORRUPTION is one of the serious OFFENCES in the world which hinders the development of any country as the CORRUPTION process is used as the means to flout various rules, procedures, systems and also to exploit the discretionary powers and the high positions held by some of the officials and other prominent people in the country.

Many laws have been enacted in the process of curbing corruption. Every law has remained almost a paper tiger because no law could take steps in a fashion that corruption could be prevented. Yes, it is almost impossible to prevent corruption because of involvement of exploitation of high positions held and discretionary powers vested. In this process, the laws relating to many aspects like the Central Excise Laws, Income Tax Laws, Gift, Wealth Tax Laws, other Tax Laws and so many other laws have been provided with rules and procedures wherein the prescribed procedures

are set and less discretionary powers are provided to the officials. Even then, there remains a scope for exploitation of various high positions and discretionary powers held.

It is observed that several agencies, viz. Vigilance Enforcement, ACB, CBI, CVC etc ., have been set up and vested with powers for taking up the Anti-corruption cases and their investigation. Though there are various laws and court decisions, it remains a challenge to the agencies to investigate the anti-corruption cases and to charge sheet successfully because of the wrong claims and submissions made by the corrupt herein after referred to as - THE ACCUSED OFFICER (A.O.).

Anti-corruption cases are viewed from two different angles. One from the the ACCUSED Officer's angle and the other from the Institution - where he is employed or where he is having a controlling interest or his role is involved in the day to day activities.



At the level of an organization, it is essential to have in place various systems and control procedures, in order to prevent the occurrence of Corruption. The Systems and Control Procedures placed would prevent the occurrence of corruption and even when corruption occurs at one level of the organization, the systems will bring the case immediately into light because of the systems placed at the next level.

In the first instance itself the records, which are required for verification, are to be ascertained and seized, as there is every chance for the management or the employees to alter or deface the records, which consist of the information required for the investigation process. The main records would be the communication files, Minutes Registers, the records of the Cash and Bank Transactions and in particular the credit transactions of the Institution. The communication files and the Minutes Registers provide the information on the powers vested with the management or the employees and the propriety in making certain decisions can be known to a large extent. Where the Cash, Bank and Credit transaction records are obtained, it will be known how much fraud or corruption has occurred and what is the amount of loss incurred by the Institution.

In my experience, I have observed that, in the cases of anti-corruption, though a list of disproportionate assets is made and the enquiry is initiated, the ACCUSED OFFICER starts making claims about the genuineness and the sources of income by which he has acquired the assets under question. Whatever be the claim made by the ACCUSED OFFICER, it has to be verified with other documentary evidence, which is a very lengthy and tedious task as it requires a lot of time for collation of information, collection of documentary evidence, correlation of the information provided and the claims made with the evidences collected, etc. Many a time, the correlation procedure may also fall beyond the expertise of the investigating officer, as it is not part of his regular duties.

The most important phrases used in Section 13(1) (e) of the PC ACT are known sources of income, giving a satisfactory account and disproportionate assets. The relevance of known sources of income is very crucial and the same should be an authentic source and must have been complied with all the statutory obligations including the service and conduct rules of the AO. Similarly, the satisfactory account of transactions and sources must be rendered by the AO. It is for the investigating agency and prosecution to prove the disproportionate assets conclusively and without ambiguity without which the case will be lost.

KNOWN SOURCES OF INCOME - The various sources of Income considered as Known Sources of Income and generally to be taken into consideration are

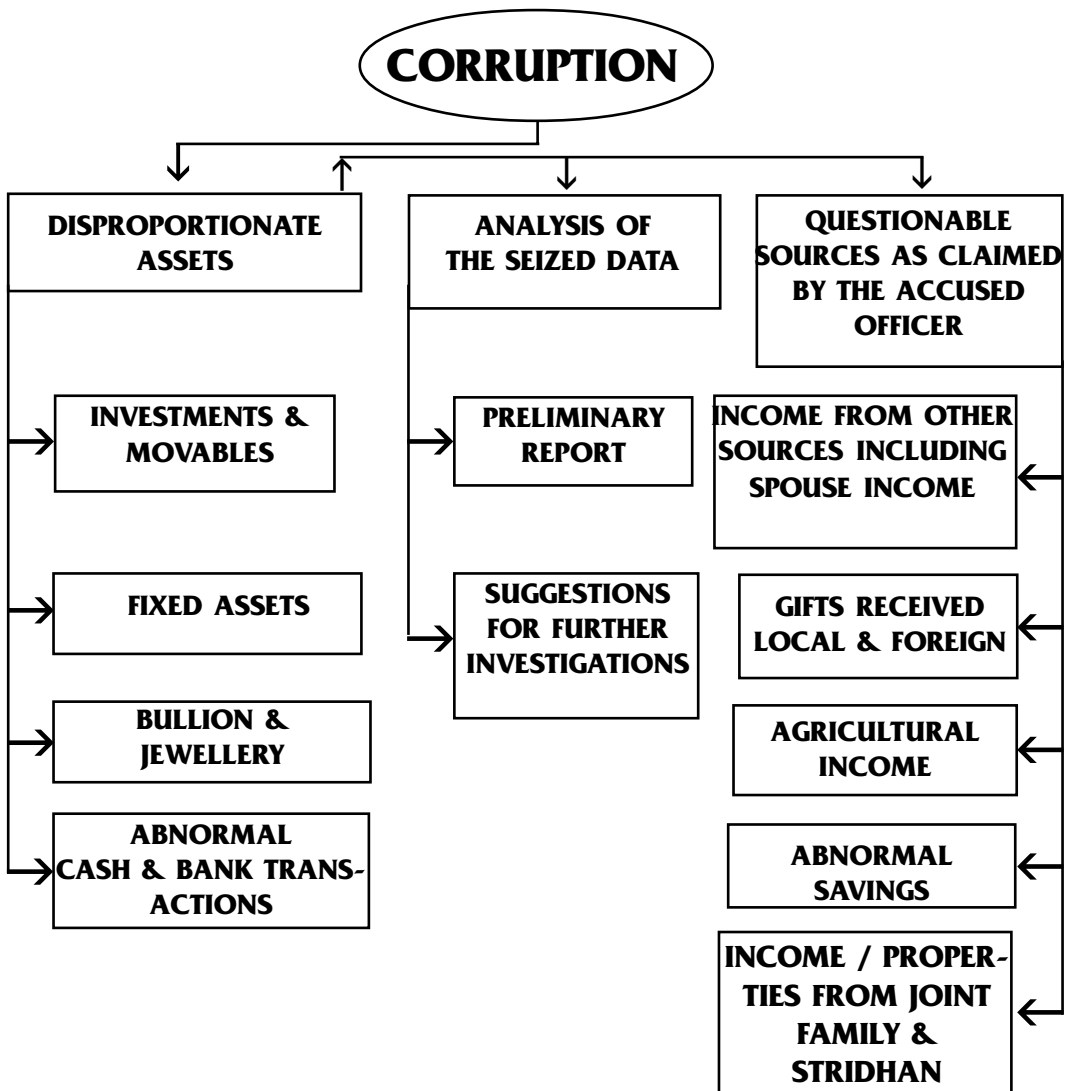
- ✦ Salary, benefits, etc, given by employer
- ✦ Sources mentioned in APRs
- ✦ Sources mentioned in IT Returns
- ✦ Gifts, Stridhan, Will, etc., which are registered and shown in APRs and/or IT Returns

The expression **known sources of income** must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "especially within the knowledge" of the accused, within the meaning of section 106 of the Evidence Act. "Known Sources of Income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

CHECK PERIOD- It is the period taken by the investigating agency as the period to establish misconduct under Section 13(1) (e) of PC ACT for determination of assets disproportionate to the known sources of income.

PERUSAL OF BOOKS OF ACCOUNT - It was observed in many cases, that certain books of account, though not in proper form (i.e. either in diaries or on chits / small pieces of paper / slips) are maintained by the ACCUSED OFFICER to maintain the sequences of in-flows and out-flows of funds, which shall be analyzed and a separate summary has to be made depending on the nature of expenditure and nature of investments made or assets purchased. This will provide an insight into the nature of transac-

tions entered into by the ACCUSED OFFICER and the tentative list of investments made and fixed assets purchased etc., whether they are in the seized assets list or not. A correlation of the books or slips maintained by the A.O. is to be made. It would be possible to correlate various other transactions which have occurred during the days of cash transactions and it can be linked to the dates of purchase of various assets, whether they are in the seized assets list or not.



It was observed in a particular case that an agreement for sale was found for a higher amount than the amount it was registered for by payment of stamp duty with the signature of the vendor only. The same agreement was correlated with various other slips found which mentioned the payment of the same amounts to the vendor. The A.O. claimed that he was having necessary sources for the amount at which the assets were registered. But, it is to be noted that there were cash transactions evidenced by slips found and the photocopy of the agreement for sale with the signature of the vendor only, which consisted of the original amount of purchase and was destroyed after the registration occurred. It was a mistake of the A.O. to retain the photocopy of the sale agreement consisting higher amount and it has given a lead for further investigation of the transaction.

In another case, the accused officer was in the habit of visiting Clubs and spending huge amounts but took care to settle the bills on cash basis regularly, thereby, avoiding monthly bills for huge amounts. The same was identified with a receipt seized, which had not figured in the Monthly Club Bills.

PERUSAL OF BANK ACCOUNT - Perusal of Bank Accounts will provide an insight over the transactions from other bank accounts maintained by the ACCUSED OFFICER and light is thrown on a new path which leads to other bank accounts where in there are inexplicable transactions.

In some cases it was observed that the amounts are accumulated in one bank account and after six months the balance has been withdrawn and deposited / transferred to a new account and in such a fashion, several accounts were opened and closed in order to destruct the traces of the earlier transactions. But, in the course of perusing the currently maintained bank account, it was observed that there was a transfer from other bank account in the same name at other place, on the first day of opening the account, as banks do not allow cash

withdrawal of huge amounts and a Demand Draft is given to the person drawing the monies. Hence, the ACCUSED OFFICER could not avoid taking a demand draft and deposit it in the new account. This has lead to traces of the person having separate accounts in separate banks and various other un-explicable incomes and withdrawals were unearthed.

In a case which has been dealt with by me, it has been observed that, in order to project legitimacy, some A.O.s have produced Bank Accounts, where in there were transfers from their Spouse's Bank Account, which has been explained to be their hard earned monies. When, the same accounts which were used for transfer of funds were perused, it was observed that there were many credits into the spouse's account from an account already closed by the A.O. When the closed Bank Account Statements were obtained and perused, it was observed that there were huge number of questionable sources from which the A.O. has earned monies.

In another case, it was observed that a car was being used by the A.O., which the A.O. has claimed that it is not his own and belongs to others. On a perusal of the Registration Certificate of the vehicle, it was observed that it was hypothecated to a Bank and the loan account statement of the vehicle has been obtained from the Bank. The statement was found to be consisting of several payments of installments from the bank account of wife of the A.O. Hence, it was proved that though neither the A.O.s name nor of his wife has been mentioned on the Registration Certificate, he is the Benami Owner of the Car through his wife. In this case, perusal of the Bank Account only has provided information for the investigation process.

Power to inspect Bankers' Books - Under Section 18 of the PC ACT, if from information received or otherwise, a Police Officer has reason to suspect the commission of an offence which he is empowered to investigate under Sec. 17 and considers that for the purpose of

investigation or inquiry into such offence, it is necessary to inspect any Bankers' Books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries there from, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section.

ANNUAL STATEMENTS OF PROPERTY - PROVIDED BY A.O. - It is essential for any government employee to provide the annual statements of property to the employer wherein there should be a mention of all the properties acquired and the investments made up to the previous year and for the year for which the statement is furnished. The statement has to be considered for arriving at the value of investments disclosed and the same shall be correlated with the information provided / obtained from the other evidences.

The recent amendments to Income Tax act stipulate that Sub-registrar value or consideration declared, whichever is higher should be the basis for valuation and not otherwise. This is very relevant because of the earlier practice which used to show lower consideration but pay Stamp Duty as per Sub-registrar value. Reference must be made to definition of "Known Sources of Income" which is very relevant.

SHARES AND BONDS - CONCERNED AUTHORITIES - It has been claimed by many an ACCUSED OFFICER that the shares and bonds unearthed for which certificates / documentary evidences are available are the only investments. In such cases the I.O should approach the concerned authorities like the Registrar of Companies (ROC) where the particulars of each and every shareholder of a company are available in detail since the incorporation of the Company. It is very

essential to approach the ROC to find out any previous transactions of purchase / sale of shares by the ACCUSED OFFICER in the records of the same company. This will make it clear whether the investments / bonds / shares as declared / claimed are the only ones or there are other transactions which are suppressed. It is important to note that, where there are public issues of shares, any traces of shares purchased or sold by the A.O. are found, it is essential to approach the Issue Registrars and Transfer Agents for the Companies whose shares are purchased or sold.

It has been observed that, many an ACCUSED OFFICER were taking the cover of the Share Market Boom, where in they claim, they made huge monies. In a case where any transactions in the shares or bonds are identified, it is to be noted that it may not be the beginning or the end of the transactions. It is required to identify the Stock Broker with whom the transactions have been entered into and the statement of account from the Stock Broker has to be obtained and the transactions are to be perused. It is not possible to find out the sources of income, simply where statements from one broker are obtained. It is to be identified if there are transactions with any other brokers also.

"LOSS IN INCOME TO BE ACCOUNTED FOR"

In a particular case, it was observed that, the A.O. was holding about only 100 shares of a company which were carrying very high market price earlier. I was aware of the fact that, during the past 1 - 3 years, there were high speculative transactions happening on the Stock Exchanges in those shares. The base data was obtained from the Share Broker of the AO. From the Share Transfer & Issue Registrar, we obtained the statements of transactions in relation to the shares with the A.O's name on the Stock Exchanges. It was observed that, during the speculative period, he has made huge transactions for more than 10,000 shares of the Company and has incurred huge losses in the

speculation. It was also observed that the proceeds for the transactions have been routed from another Bank Account which has been closed subsequently before seizure of records and about which the Investigating Agency was unaware.

Thanks to the recent trend of computerization and electronic form of share certificates, there are very few operators who maintain the shares accounts in manual form. It is essential to obtain statements of accounts from those operators who maintain Dematerialized format of shares in electronic form, wherein all types of transactions of purchase / sale / exchange are recorded.

GIFT TRANSACTIONS - Most of the ACCUSED OFFICERS claim the source for acquisition of an asset / investment to be a gift received, be it an Indian gift or from a foreign country. It is to be noted that in a claim, which specifies that the gift is received till October 1998, the same shall be falling under the Gift Tax Act, and the gifts shall be taxable subject to certain exemptions provided under the Act itself. Where an abnormal amount has been gifted, it is taxable under the Act and the Gift Tax Returns shall be filed and the same shall be informed to the Income Tax Department, as Gifts are not taxable under the Income Tax Act and are taxed separately. After October 1998, making any gift non-taxable has made the Gift Tax Act redundant. But, the procedure of informing a gift to the Income Tax Department along with the Returns of Income is not abolished.

The sources of the Donor also are to be authentic and shall be proved accordingly. It was observed in a case, where an A.O. has claimed that the source of purchase of a property was a gift from his father-in-law. After thorough verification of records and inquiries, it was found that the father-in-law was a retired employee earning pension of nominal amount and has no other sources of income. Hence, the claim of the A.O. was found to be wrong and there was no mention in the Income Tax

Returns by the Donor and by the Donee. Hence, the Gift Tax Returns filed shall be a major source of information, whether the amounts are actually received or not from a Donor whose name has been claimed.

There is a little peculiarity about the foreign gifts received. A gift shall be received from a relative or a friend only. It shall be received through proper banking channel and an inward remittance note shall be obtained from the bank in which the specified purpose of remittance is mentioned. With out a bank's inward remittance certificate, any remittance into India is unlawful. In order to establish the genuineness of the foreign gifts, it is very much essential to ascertain the gifting capacity of the donor in foreign country, for which the Income Tax Department asks for a confirmation by submission of a bank statement, where in there shall be sufficient amount entries for about at-least a period of 6 months. In case of Gift transactions, some light has to be thrown on the gift transactions from the angle of the Applicability of Service and Conduct Rules and the information provided by the A.O. to his employer shall be perused and verified in consonance with the claims made by him.

In case of remittances through Foreign Currency, RBI has to be notified in specified Form. Also in case any foreign currency is brought in cash by any person or self, RBI has to be notified.

INCOME TAX RETURNS - These returns are one of the main TOOLS available to the Investigating Officer in investigation of anticorruption cases. An annual income tax return made by any person is an ultimate evidence of the properties declared by him to the Government. Though all the properties may not necessarily be shown in the Income Tax Returns, some day or the other, there will be a movement in the assets like sale or purchase, which shall be informed to the Income Tax Department. Where there is no disclosure of the assets purchased or sold, the income from the same shall become illegal, as the income is

not taxed. Under the Income Tax Act, there is no distinction between the legal or illegal income as any type of income is taxed under the Income Tax Act, with certain exceptions.

It has been observed in a case that the A.O. was an officer having discretionary powers over awarding various Construction Contracts. The A.O.'s spouse has started supplying materials to the Contractor in whose name, a Contract has been awarded by the A.O. The contractor paid about 20% commission on the materials supplied, where as the market rate of commission was only 5%. On a perusal of the copies of the Contract between the Contractor and the A.O.'s wife and on a comparison of the market rates, it was observed that, the A.O. was benefited by the Contractor in the form of undue higher rate of commission, which has been produced before the authorities, as his spouse's legitimate income source and there was a gift of the same into the account of the A.O. and ultimately the claim of the A.O. has been rebutted.

In another case, the A.O.'s spouse was a professional having required skills and qualifications to carryout his profession and there was no connection proved between the professional income and the A.O.'s influence over the spouse's earnings. Hence, the A.O.'s claim has been accepted. It should be noted that sources though genuine, not intimated to Govt. under conduct rules and Income Tax not paid need not be accepted as known sources of income.

AGRICULTURAL INCOME - This is one of the major shelters taken by various ACCUSED OFFICERS, as in India no proof is required as far as Agricultural Income related transactions are concerned. The land cess and the disclosure in the Income tax Returns for Gross Rate purpose are the only documentary evidences for the agricultural income. There is a popular notion that Agriculture Income is exempt from IT and need not be declared in IT Returns, which is false; such income should be declared in IT Returns for the Grossing up of the income and

taking the Tax Slab to a higher slab which will increase the Income Tax payable.

It may be noted that, though no crops are raised on the land, it is essential to pay the land cess to the government. It is very important to peruse the Income Tax Returns in order to identify the Agricultural Income disclosed by the ACCUSED OFFICER. There is no taxation on the Agricultural Income received with certain exceptions. It is not possible to keep the amounts received from the Agricultural operations. It is to be deposited / invested somewhere and the traces of those investments also are to be observed. In order to ascertain the Agricultural Income earned, it may be essential to obtain a certificate from the local Revenue Authorities, where the land is located and very essential to identify the types of crops raised and the market value of the same. A block figure of about Rs. 10,000/- per acre per year cannot be a proper claim, which is the usual claim made by an A.O., and it is not possible to accumulate all the amounts in cash. The A.O. shall be in a position to provide information on the modes adopted for investment of the same during those years also, with necessary evidence. Otherwise, the claim would lose its sanctity. As there is no tax for the Agricultural Income, many an ACCUSED OFFICER, have purchased lands of small or almost nil value, where there is no crop yielded or cultivated at all and started claiming that the yield from the crops is the source for acquisition of various properties.

INCOME FROM JOINT FAMILY PROPERTY AND STREEDHAN

In a case dealt with by me, I was provided with the information on the claim made by an A.O. that, various assets were acquired by him from the incomes received from his Joint Family and the same could not be contested by the Investigation Officer, as it was observed by him that the A.O.'s family was really big with his father and 6 brothers, almost all holding high positions.

On a prima-facie inquiry about the joint family, I observed that all the brothers were younger to the A.O. and almost all of them entered into service or business only during the past years. The joint family was holding very less property in reality and very less tax was paid by the joint family. I have applied all the tools and methodologies discussed earlier even with the file of the joint family and it was observed that the claim of the A.O. that the source to acquire huge assets was from the Income from the joint family was incorrect.

In another case, the A.O. acquired huge property worth lakhs and one of the claims made was that one of the sources for acquisition of the property was STREEDHAN of A.O.'s wife. On a perusal of the records, it was observed that the amount of source claimed was a round figure and the A.O. was married about 3 years before the acquisition of the asset. The A.O. was not in a position to provide information about the mode of investment and the accruals on the STREEDHAN for over 2 years. The Investigating Officer was very energetic and enthusiastic and he had also obtained the required information in relation to the financial

status of the A.O.'s father-in-law who was in Government Service and it was proved that, the amounts which the A.O. has claimed to be the STREEDHAN, was in reality not provided by his father-in-law at the time of A.O.'s marriage.

In the investigation of corruption cases, it is advisable to use the services of technical experts. Before concluding, I want to clear a normal confusion that exists in the minds of people regarding Auditors & Chartered Accountants.

An auditor is a generic term used for any person who verifies the financial or non-financial transactions and provides his opinion. There is no formal qualification required to be an Auditor. Anybody who is empowered with the power of verification can be called an auditor for the limited extent. Where as, a Chartered Accountant is a professional who is trained for the purpose and is given knowledge inputs on various Acts, Laws, procedures, policies prevailing in India. He is trained in such a fashion that he can tackle any issue relating to any Tax Laws, Revenue Acts, financial and non-financial transactions.

