

(1984) 07 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1523 of 1982

Aditya Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 147

Citation : (1985) 156 ITR 113 : (1984) WLN 499

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Advocate : S.M. Mehta, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Sidhu, J.—The petitioner, M/s Aditya Mills Ltd., is engaged in the business of manufacturing cotton and synthetic yarn. M/s. Traders and Miners Ltd. is said to have been working as sole selling agent of those products at the material time. In the return of income filed by the petitioner for the assessment year 1972-73, it claimed a deduction of Rs. 7,80,952 on account of expenses alleged to have been incurred by way of commission paid to the selling agent aforementioned. The petitioner did not, however, disclose the name of M/s. Traders and Miners Ltd. as its selling agent in the return or the documents accompanying it. By his letter (annexure 2), dated April 1], 1974, the Income Tax Officer (ITO) required the petitioner to give particulars, inter alia, of the selling agents and the commission paid to them. The petitioner sent a laconic reply (annexure 3) dated April 23, 1974, in which the required particulars were not furnished; The ITO had, therefore, to summon and record the statement (annexure 6) of R. K. Parikh, the managing director of M/s. Traders and Miners Ltd., on February 26, 1975. It appeared from Parikh's statement that the petitioner and M/s. Traders and Miners Ltd. were carrying on their respective businesses from the same premises and that in fact the employees of the petitioner had been working for M/s. Traders and Miners Ltd. as well. The ITO, thereafter, recorded the statement (annexure 5) of P.O. Poddar, the Executive President of the petitioner on March

15, 1975. Poddar's statement also did not help the ITO in ascertaining the particulars of sales alleged to have been effected through the agency of M/s. Traders and Miners Ltd. On March 19, 1975, the petitioner wrote a letter (annexure 7) giving some information regarding the services alleged to have been rendered by M/s. Traders and Miners Ltd. for the petitioner. The ITO made the assessment order (annexure 8), dated March 27, 1975, u/s 143, I.T. Act, 1961, (hereinafter called "the Act"). He did not discuss in that order the merits or otherwise of the petitioner's claim of deduction of Rs. 7,80,952 on account of expenses incurred by way of commission alleged to have been paid by the petitioner to M/s. Traders & Miners Ltd. In the assessment order made by the ITO, he allowed, by necessary implication, the petitioner's claim and assessed the petitioner's income for the previous year ending December 31, 1971, after making allowance for the aforementioned amount by way of expenses on sales effected during that year. On April 22, 1978, the ITO reopened this assessment with a notice (annexure 9) served on the petitioner u/s 148 of the Act. The notice reads as under :

Whereas I have reason to believe that your income chargeable to tax for the assessment year 1972-73 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore, propose to reassess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your income in respect of which you are assessable for the said assessment year.

This notice is being issued after obtaining the necessary sanction of the Commissioner of Income Tax, Rajasthan, Jaipur.

2. The petitioner's case is that though the ITO had no jurisdiction to reopen the assessment, yet the petitioner made a reply (annexure 10), dated May 10, 1978, to the aforementioned notice stating that the reply was being made without prejudice to the petitioner's right to raise the question of jurisdiction. The petitioner raised the objection that the notice was bad in law and that, therefore, no return need be filed in response to it. The petitioner, however, told the ITO that it had already filed its return u/s 139 of the Act and that the same may be treated as the return filed in response to the impugned notice. On September 1, 1982, the IAC of Income Tax sent a notice to the petitioner, purporting to do so u/s 142(1) of the Act, requiring the petitioner to produce documents relating to all the sales on which commission was alleged to have been paid to the sole selling agent during the previous year ending December 31, 1971. He also called upon the petitioner to produce evidence regarding the services rendered by M/s Traders & Miners Ltd. and particulars of the sales in which commission had been paid to them. The petitioner was also apprised by that notice that the Department had since collected evidence showing that no commission, etc., had been paid to M/s. Traders & Miners Ltd. and that, therefore, the amount of Rs. 7,80,952 may not be allowed as deductible expense for the assessment year

1972-73.

3. The petitioner made a reply to that notice on September 11, 1982, stating that the necessary material had already been placed before the ITO who made the assessment for the assessment year 1972-73 and that he had correctly allowed the amount of commission paid to the sole selling agents as deductible expense. The petitioner further submitted in its reply that merely because the Department had subsequently collected some information in the course of making assessment for the year 1976-77 and rejected, on the basis of that information, the petitioner's claim for a similar deduction during that year, such subsequent information is no ground for reopening the assessment for the year 1972-73. The petitioner demanded a copy of the reasons recorded by the ITO for issuing notice dated April 22, 1978, u/s 148(1) of the Act. The petitioner threatened that if the proceedings were not dropped and the notice u/s 148(1) was not discharged, he would be left with no alternative but to file a writ petition in the High Court challenging the entire proceedings as to the reopening of the assessment in question,

4. The Department did not yield to the aforementioned threat with the result that the petitioner filed the present petition on September 30, 1982, seeking a writ of certiorari for quashing the notice dated April 22, 1978, and for an order directing the Department to refrain from reopening the assessment for the assessment year 1972-73.

5. The only ground on which the petitioner has challenged the competence of the ITO to issue the impugned notice is that since the petitioner had disclosed the name of its sole selling agent to the ITO during the course of assessment proceedings u/s 143 of the Act, and had placed the necessary material before him at that time, and that since the assessment had already been made by the ITO u/s 143, it is not lawful for the ITO to reopen the assessment merely because on reconsideration of the same material, he wants to change his mind and reject the claim of the petitioner in respect of the amount of commission paid to M/s. Traders and Miners Ltd.

6. The respondents, including the IAC of Income Tax, before whom the proceedings pursuant to the impugned notice are pending now, contested this writ petition and filed a written reply in answer to it. The respondents raised a number of preliminary objections to the maintainability of this writ petition. One of these objections is that the writ petition suffers from inordinate delay inasmuch as the impugned notice was served on the petitioner on April 22, 1978, and the writ petition was filed on September 30, 1982, and this delay of nearly 4 1/2 years has not been explained. It is further submitted that the ITO, who issued the impugned notice, had jurisdiction to reopen the assessment because he had reason to believe that the amount of Rs. 7,80,952 mentioned above which was chargeable to tax had escaped assessment in the year 1972-73 by reason of the omission of the petitioner to disclose fully and truly all material facts necessary for its assessment for that year. The respondents further pleaded

that as a result of the surveys and investigations conducted by the Department after making the assessment for the year 1972-73, the ITO came to possess information which gave him reason to believe that the sole selling agent was nothing but a dummy created by the petitioner as a device to escape assessment and that in fact the so-called sole selling agent had not rendered any service to the petitioner. Those surveys revealed that many persons, who are alleged to have rendered services at various centres were simply non-existent and fictitious, and that others who were existent had not rendered any such service as alleged. These investigations and surveys revealed that the petitioner had escaped assessment on a total income of Rs. 30,61,693 spread over four different assessment years as follows:

Rs.

1970-71

5,62,983

1971-72

6,48,533

1972-73

7,80,952

1973-74

10,69,225

Total 30,61,693

7. The respondents pleaded that it is not a case of the ITO changing his mind in respect of the same material, but it is a case of concealment of material facts by the petitioner and of the ITO discovering subsequently that M/s, Traders and Miners Ltd. was nothing but an alter ego of the petitioner and that it had not rendered any service to the petitioner in any of the four years mentioned above to entitle the petitioner to claim deductions on account of the so-called expenses incurred on the sales of its products. It was in this context that the respondent mentioned that it was in the course of the proceedings of assessment for the year 1976-77 that it came to light that M/s. Traders and Miners Ltd. was a dummy created by the petitioner to escape assessment on huge amounts of income in various years and, therefore, the ITO rejected the petitioner's claim for deduction of similar expenses for that year. The respondents further pleaded that the assessment order for the year 1976-77 was affirmed in appeal by the Commissioner of Income Tax (Appeals), Rajasthan, on March 30, 1981. The petitioner did not challenge the said order further with the result that it has become final. It was thus on the basis of the information collected in 1976-77 that the ITO served the impugned notice; and, therefore, it is not a case of change of mind on reconsideration of the old material available on the file of

assessment for the year 1972-73. The respondents pleaded that the ITO had recorded his reasons for issuing the impugned notice. A copy of the reasons so recorded has been placed on the record as annexure R-3. This document would show that the impugned notice was issued u/s 148 read with Section 147(a) of the Act. The Commissioner had also perused the reasons recorded by the ITO and was satisfied that it is a fit case for issuing the impugned notice.

8. The assessing authority further pleaded in its counter that let alone making a full and true disclosure in the return or in the documents accompanying the return of the particulars of sales alleged to have been made through the agency of M/s. Traders and Miners Ltd., the petitioner did not even disclose the name of the so-called sole selling agent in those documents. The petitioner did not make the necessary disclosure even after he was specifically required to do so, vide letter (annexure 2) dated April 11, 1974, addressed by the ITO to the petitioner. In its reply (annexure 3) to the letter dated April 11, 1974, the petitioner chose to be evasive and filed a laconic yarn sales statement without mentioning in that statement any payment of any commission to any selling agent. The assessing authority pleaded that the petitioner deliberately kept silent about the so-called payments because the selling agent was a mere dummy created by the petitioner to evade payment of tax on its income. The assessing authority further mentioned in this context that the petitioner did not furnish at any time the particulars regarding the purchasers of its products. It did not disclose the name of any person who might have negotiated those sales. P.D. Poddar of the petitioner and R. K. Parikh of M/s. Traders and Miners Ltd, made statements before the ITO during the course of the assessment proceedings which statements, according to the assessing authority, are " most revealing, being evasive, short of required details and most unsatisfactory in nature ". Thus, according to the assessing authority, a major portion of the petitioner's income escaped assessment by reason of concealment of material facts necessary for assessment for that year.

9. It is common ground that this case falls u/s 147(a) of the Act. A reference to the reasons recorded by the ITO u/s 148(2) (see annexure R-3) and the satisfaction recorded by the Commissioner u/s 151(2) (see annexure R-4) to the effect that it was a fit case for the issue of notice u/s 147(a) read with Section 148 would at once show that recourse was being taken by the ITO to the provisions of Section 147(a) for reopening the assessment for the year 1972-73. Section 147, in so far as it is material for our present purpose, reads as under:

" 147. Income escaping assessment.--If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee.....to disclose fully and truly all material facts necessary for his assessment for that year income chargeable to tax has accepted assessment for that year.....

he may, subject to the provisions of Sections 148 to 153,.....reassess such

income.....for the assessment year concerned.....

Explanation 2.--Production before the Income Tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this section."

10. As already stated, the ITO had recorded his reasons before issuing the notice u/s 147(a) read with Section 148 and on consideration of those reasons, the Commissioner had felt satisfied that it was a fit case for issue of notice as aforementioned. The assessment for the assessment year 1972-73 was being reopened u/s 147(a) of the Act. On an analysis of the provisions of Section 147(a) as reproduced above, it will be seen that there are two conditions precedent for the exercise of jurisdiction by the ITO to reopen an assessment and issue notice u/s 147(a), namely, that I

(i) The ITO must have reason to believe that income has escaped assessment, and

(ii) the ITO must have reason to believe that such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the relevant year.

11. So far the first condition is concerned, there is not much difficulty in holding that the ITO who issued the impugned notice u/s 147(a) read with Section 148 had in fact reason to believe that there had been underassessment of the petitioner's income during the previous year relatable to the assessment year 1972-73. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, Shah J. (as he then was), explained that the expression "reason to believe " postulates belief and the existence of reasons for that belief. The belief must be held in good faith ; it cannot be merely a pretence. It has already been pointed out that the ITO had, before issuing notice u/s 148, recorded his reasons for doing so and had obtained the prior approval of the Commissioner for issuing such notice. The ITO stated in that document that ! he believed that the amount of Rs. 7,80,952 shown by the assessee as expenditure incurred on its sales by way of commission paid to the sole selling agents had escaped assessment. The ITO recorded his reasons for entertaining such belief. The Commissioner was satisfied as to the existence and sufficiency of those reasons and consequently recorded his satisfaction stating that it was a fit case for reopening the assessment and issuing a notice u/s 148 of the Act. As held by the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and several other cases, the sufficiency of the reasons as recorded by the ITO is not justiciable. Of course, the existence of the reasons for such belief is justiciable.

12. Now, a few words about the existence of reasons for the aforementioned belief entertained by the ITO. The reasons, as set out in annexure R-3, are that the petitioner company and M/s. Traders and Miners Ltd. both belong to the

same industrial house known as the group of Kanorias at Calcutta and that the arrangement regarding M/s. Traders and Miners Ltd. acting as agents for the petitioner company was part of a scheme of tax evasion adopted by the aforementioned group. He also claims to have discovered that the amount of Rs. 7,80,952 shown as deductible expenditure in the balance-sheet did not represent the expenditure incurred for the purposes of the business of the petitioner company. The reasons given by the ITO for entertaining the belief have a relevant bearing to the formation of the belief. Those reasons cannot by any means be described as extraneous or irrelevant to the purpose of Section 147(a). This court cannot go into their sufficiency. I must, therefore, hold that the first condition for the exercise of jurisdiction by the ITO u/s 147(a) of the Act is fulfilled.

13. Turning now to the second condition precedent for the exercise of jurisdiction by the ITO u/s 147(a) of the Act, the point that requires consideration is whether the alleged underassessment or escapement had occurred by reason of the omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for the the year 1972-73. The Supreme Court held in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, that the duty of disclosing all the material facts necessary for assessment of an assessee's income in a particular year lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts which, on due diligence, the Income Tax Officer might have discovered, Parliament has enacted Explanation 2 to Section 147, which has been reproduced in an earlier part of this judgment. The Explanation makes it quite clear that the production of account books or other evidence by the assessee would not relieve him of the duty of making a full and true disclosure of all the material facts necessary for his assessment.

14. Let us, therefore, proceed to consider as to whether the petitioner had discharged his duty of disclosing all the material facts fully and truly necessary for his assessment for the assessment year 1972-73. As pointed out by the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, what facts are material and necessary for assessment will differ from case to case. Now, in the instant case, it was necessary for the ITO to know all the particulars of the sales alleged to have been made by the petitioner through the agency of M/s. Traders and Miners Ltd. during the previous year ending December 31, 1971. Those particulars were absolutely essential for the ITO for coming to a correct conclusion as to whether the alleged expenditure by way of commission to the sole selling agents had in fact been incurred or not in the course of business of the sales of the products of the petitioner company during that year.

15. The Supreme Court further held in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, that it is the duty of the

assessee who wants the court to hold that jurisdiction was lacking to establish that the ITO had no material at all before him for believing that there had been such non-disclosure. Instead of discharging this onus, the petitioner in the instant case has produced documents which would reveal that the petitioner did all he could to conceal the material bearing on, and relevant to, the sales of its products during the previous year ending December 31, 1971. The petitioner filed a return of income in the prescribed form for the assessment year 1972-73 in accordance with the provisions of Section 139 of the Act. This return was accompanied by the profit and loss account and balance-sheet, a copy whereof has also been filed in the record of this case. It will be seen from these documents that the petitioner did not disclose therein even the name of the sole selling agent to whom a sum of Rs. 7,80,952 is alleged to have been paid by way of commission during the relevant previous year. The amount in question was mentioned as deductible expenditure in the balance-sheet (see annexure I--Schedule K) under the subhead "Commission to sole selling agents ". As already stated, the name of the sole selling agent was not disclosed anywhere either in the return or in the documents accompanying it.

16. The ITO had, therefore, to write a detailed letter (annexure 2), dated April 11, 1974, requesting the petitioner to furnish particulars, inter alia, of all expenses including particulars of commission said to have been paid to the sole selling agents, and also particulars of all sales, with copies of accounts of such parties with whom transactions to the tune of Rs. 10,000 or more had been entered into during that year. This letter was sent along with a formal notice u/s 142(1) of the Act requiring the petitioner to furnish the requisite information and produce documents on the date specified in the notice. The petitioner's reply (annexure 3), dated April 23, 1974, to this notice is important, more for what it conceals than what it reveals. While dealing with the query regarding particulars of commission to the sole selling agents, the petitioner mentioned that " the particulars are enclosed herewith". If we refer to the enclosure of annexure 3, it carries the title "yarn sales 1971 ". A bare glance at this document would show that it does not give any particulars of any sale. Let alone giving particulars of any sale, like the name of the purchaser and the date of sale, etc., the petitioner did not disclose in this document even the name of the so-called sole selling agent who is said to have brought about those sales.

17. It will thus be seen that till April 23, 1974, when the petitioner filed annexure 3 before the ITO, he had not only not disclosed fully and truly all material facts necessary for his assessment for the assessment year 1972-73, but had adopted a stance calculated to stonewall all efforts by the ITO to get particulars of the sales alleged to have been made through the so-called sole selling agent.

18. It was under these circumstances that the ITO decided to record the statements of P. D. Poddar, principal officer of the petitioner company, and of R. K. Parikh, managing director of M/s. Traders and Miners Ltd. These statements were recorded in February, March 1975. Parikh told the ITO that all businesses

between his company and the petitioner company used to be transacted orally and that his employees had been orally informing the employees of the petitioner in respect of orders secured from prospective purchasers. He went on to say that no evidence was available with his company to prove the orders secured by it for the petitioner company. He made bold to state that his company did not maintain any record of any such sale as aforementioned. He further disclosed that in fact his company was not having any godowns nor was it effecting any insurance of the goods involved. All this, according to him, was done by the petitioner company itself and they were reimbursed by his company for such facilities provided and services rendered.

19. It is, therefore, obvious that the statement of Parikh does not give us any information regarding the particulars of the so-called sales made by the petitioner company through M/s. Traders and Miners Ltd. The statement of P.D. Poddar recorded subsequently makes confusion worse confounded. He too did not produce any documentary evidence worth the name to show what services, if any, were rendered by M/s. Traders and Miners Ltd. in their alleged capacity as sole selling agents of the petitioner company.

20. I am thus satisfied on the basis of the documents produced on the record of this case that the petitioner did not disclose fully and truly all material facts necessary for the petitioner's assessment for the year 1972-73. On the contrary, the documents reveal that the petitioner was determined to and did conceal all the material facts in respect of the sales of its products during the relevant previous year.

21. The question which falls for further determination is whether the amount of Rs. 7,80,952 escaped assessment by reason of the concealment by the petitioner of the particulars of its sales during the relevant previous year. The respondent's case in this respect is that if the particulars of the sale had been disclosed by the petitioner as required of him by the ITO, it would have enabled the latter to discover before he made the assessment order dated March 27, 1975, that in fact the petitioner had not utilised the services of any selling agent for effecting, its sale and that, therefore no expenditure had in reality been incurred on account of the so-called commission to the selling agent. The respondents pleaded in their counter that in the surveys and investigations conducted by the Department after making the aforementioned assessment, it transpired that the so-called selling agent was nothing but a dummy created by the petitioner as a device to escape assessment and that in fact no services, etc., had been rendered by the said agent in the matter of the sales of the petitioner during the relevant year. These investigations and surveys further revealed that by this device, the petitioner had escaped assessment on a total income of Rs. 30,61,693 over a period of four years from 1970-71 to 1973-74. In the facts and circumstances, therefore, I have no doubt that the ITO had reason to believe that the petitioner had escaped assessment on the amount of Rs. 7,80,952 during the assessment year 1972-73, by reason of the concealment by him of

the particulars of the sales effected by him during the relevant previous year. The Supreme Court held in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, that if there were in fact some reasonable grounds for thinking that there had been any nondisclosure as regards any primary fact which could have a material bearing on the question of underassessment, that would be sufficient to give jurisdiction to the ITO to issue notice for reassessment. In the present case, the concealment in question had a direct bearing on the question of underassessment.

22. For all these reasons, I have no hesitation in holding that the second condition for giving jurisdiction to the ITO to reopen the assessment is also satisfied.

23. I may now deal with a few rulings cited by Mr. S. M. Mehta, learned counsel for the petitioner. In the *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, cited by Mr. Mehta, the assessee had, unlike the petitioner in the present case, disclosed in the course of the original proceedings of assessment all the sales of shares made by him during the relevant previous year. The ITO accepted the assessee's version that the assessee was merely an investment company and that the sales of shares were casual transactions of changing investments, and not by way of regular trading in stocks and shares for profit. The majority consisting of S. Das, K. C. Das Gupta and N. Rajagopala Ayyangar JJ. held that the assessee had made a true and full disclosure by disclosing the sales of shares before the ITO who completed the original assessment and that the question whether the sales were trading transactions or by way of change of investment was a matter for the ITO to decide. The majority held that the duty to disclose fully and truly all material facts did not mean, in the facts of the cited case, a further duty on the assessee to make an admission that those sales were by way of trading in shares for the sake of profit. The minority consisting of Hidayatullah and J. C. Shah JJ., on the other hand, held that the assessee was guilty of concealment inasmuch as it had not disclosed that, although it was mainly an investment company, it was, according to the memorandum and articles of association, authorised to deal in stocks and shares. Mr. Mehta, learned counsel for the petitioner, has not been able to show as to how the majority view helps the petitioner in this case. As already seen, this is not a case in which the petitioner had disclosed the particulars of the sales which, according to him, were conducted through the alleged agency of M/s. Traders and Miners Ltd. The ITO was thus deprived of the material facts necessary for assessment for the relevant year. The present is not a case in which the material facts had been furnished or the ITO was called upon to draw his own inference from those facts. This is, on the other hand, a case in which the material facts were not disclosed at all. The cited case has, therefore, no application to the facts of this case.

24. Another authority cited by Mr. Mehta is a Bench decision of this court in *Purushottam Das Bangur Vs. Income Tax Officer, C-Ward and Others*, This was a

case of reassessment u/s 147(b) and not u/s 147(a) and, therefore, it does not directly apply to the present case in which the impugned notice was issued u/s 147(a). Moreover, the Division Bench arrived at the conclusion in the facts of the cited case that the ITO who had issued the notice u/s 147(b) had done so merely on the suspicion that the price of shares of Maharaja Shree Umaid Mills was manipulated by the assessee in the stock exchange. Section 147(b) lays down that the ITO may issue notice under that section on the basis of information in his possession which leads him to believe that income chargeable to tax has escaped assessment. He cannot issue such a notice merely on the basis of a suspicion. The Bench drew a distinction between "information" and "suspicion" and held that mere "suspicion" would not give jurisdiction to the ITO to issue notice u/s 147(b). This authority is also, therefore, not relevant for our present purpose.

25. Other cases cited by Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, Commissioner of Income Tax Vs. Bhagwan Ltd., and Income Tax Officer, Special Civil No. VII, New Delhi and another Vs. Dwarka Das and Brothers, . These cases are being discussed together for they all relate to hundi loans which had been disclosed in the original assessments and even then the ITO concerned sought to reopen the assessment on the ground that the loans were bogus. The impugned notices of reassessment in those cases were quashed on the ground that so far as the assessee was concerned, he had made the necessary disclosure by producing the hundis on the strength of which he had obtained loans from creditors and his account books, and that it was for the ITO to investigate and determine whether those documents were genuine or not. The assessee could not, under the circumstances, be legitimately expected, so runs the ratio of these rulings, to confess before the ITO that the hundis and the books of account produced by him were bogus. So far as the instant case is concerned, it has already been found as a fact that the assessee did not disclose fully and truly all material facts necessary for his assessment. It has been further found that let alone making disclosures about the particulars of his sales during the relevant year, he did all in his power to prevent the ITO from acquiring any knowledge about any particulars of any sale effected during that year. This group of authorities would not, therefore, lend any support to the argument advanced on behalf of the petitioner that the ITO has no jurisdiction to reopen the assessment.

26. Two more cases cited by Mr. Mehta may be mentioned here. These are G.R. Constructions Vs. Income Tax Officer, Surat-I, and H. Noronha Vs. Income Tax Officer, Circle-II, Bangalore, . On the facts of these cases, the Gujarat and Karnataka High Courts held that the material facts necessary for assessment had already been disclosed by the assessee concerned at the time of the original assessment and that the notice u/s 147 had been issued by the ITO merely because, on the basis of the same material, he had changed his mind. The ratio of these cases is that on the basis of the same material, a change of opinion cannot form a legal basis for reassessment u/s 147 of the Act. It has already

been made abundantly clear that the instant case is not a case of change of opinion in respect of the same material. It is on the contrary a case of non-disclosure by the petitioner of all material facts necessary for his assessment.

27. In conclusion, therefore, I hold that both the conditions for giving jurisdiction to the ITO to act u/s 147(a) of the Act are satisfied in this case inasmuch as (i) he had reason to believe that some income of the assessee had escaped assessment and (ii) he had also reason to believe that such escapement was by reason of the concealment by the assessee of the particulars of its sales during the relevant year which were necessary to be disclosed to enable the ITO to make a correct assessment. This writ petition must, therefore, fail and is hereby dismissed with costs. Counsel's fee Rs. 1,000.