

(2004) 12 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 538 to 540 and 709 of 2001 3
December 2004

Arun Kumar Maheshwari

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143, 147, 148, 69, 69A

Citation : (2005) 144 TAXMAN 651

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : V.B. Upadhaya, Rakesh Ranjan Agrawal and Suyash Agrawal, for the
Petitioner B.J. Agarwal, Ashok Kumar, G. Krishna, A.N. Mahajan,, for the
appearing parties;

Judgement

R.K. Agrawal, J.

By separate petitions filed under article 226 of tile Constitution of India, Arun Kumar Maheshwari, petitioner in Civil Misc. Writ Petition No. 538 of 2001; Amit Kumar Maheshwari, petitioner in Civil Misc. Writ Petition No. 539 of 2001 and Ajay Kumar Maheshwari, petitioner in Civil Misc. Writ Petition No. 540 of 2001 seek a writ, order or direction in the nature of certiorari quashing the notice dated 15-3-2001 issued by the Income Tax Officer, Ward Bijnor, relating to the assessment year 1995-96. Civil Mise. Writ Petition No. 709 of 2001 has been filed by six persons, namely, Lalit Kumar Agrawal, Raj Kamal Agrawal, Atul Kumar Agrawal who are brothers, and their wives seeking a writ, order or direction in the nature of certiorari quashing separate notices issued to them on 15-3-2001 by the Income Tax Officer, Ward Bijnor, respondent No. 1, u/s 148 of the Income Tax Act, 1961 ("the Act"), relating to the assessment year 1996-97.

Since all the four petitions raise a common question of law, they are being decided together by a common judgment and order.

Briefly stated, the facts giving rise to Civil Misc. Writ Petition Nos. 539 to 540 of 2001 are as follows:

2. Arun Kumar Maheshwari and Ajay Kumar Maheshwari are brothers whereas Amit Kumar Maheshwari is the son of Arun Kumar Maheshwari. Arun Kumar Maheshwari and Amit Kumar Maheshwari are assessed to tax in the status of Hindu Undivided Family whereas Ajay Kumar Maheshwari is assessed in the status of individual. For the assessment year 1995-96 all the three petitioners filed their return of income on 31-3-1996 disclosing the following income:

Arun Kumar Maheshwari

Rs. 29,850

Ajay Kumar Maheshwari

Rs. 1,50,990

Amit Kumar Maheshwari

Rs. 29,850

3. The Income Tax Officer, Ward Bijnor made assessment u/s 143(1)(a) of the Act on various dates falling in the financial year 1996-97. They had also filed return under the Wealth Tax Act disclosing the following wealth:

Arun Kumar Maheshwari

Rs. 15,08,100

Ajay Kumar Maheshwari

Rs. 3,64,960

Amit Kumar Maheshwari

Rs. 1,72,800

4. It is claimed by the petitioners that in the return of wealth they had filed complete details of their wealth which included copies of their account in the firm M/s. Shanti Sugar Industries, Ravi Nagar except in the case of Amit Kumar Maheshwari where the copy of the capital account in the firm M/s. Maheshwari Sugar Industries was filed.

5. They had also disclosed that they had received gifts during the year under consideration as follows:

Arun Kumar Maheshwari

Rs. 14,00,000

Ajay Kumar Maheshwari

Rs. 21,84,000

Amit Kumar Maheshwari

Rs. 19,60,000

6. It is stated by the petitioners that during the course of the assessment proceedings under the Wealth Tax Act, the Wealth-tax Officer had made the necessary enquiries regarding the gifts and after having been satisfied about the explanation given by the petitioners had accepted the gifts and passed the assessment orders under the Wealth-tax Act on different dates. Some of the donors were also Summoned and their statements were also recorded. It is also stated by them that the Income Tax Officer, Ward Bijnor is the Assessing Authority, both in respect of the proceedings under the Income Tax Act and the Wealth Tax Act. Subsequently, it appears that the Income Tax Officer, Ward Bijnor issued separate notices on 8-2-2001 to each of the petitioners calling upon them to show cause regarding the amount of gift which was found deposited in the respective firms. The petitioners submitted their replies in which it was stated that the complete details of donors have been furnished under the Wealth Tax proceedings and the Wealth-tax Officer after making proper and necessary enquiry, had accepted the gift. The Income Tax Officer, Ward Bijnor had issued notices dated 15-3-2001 u/s 148 of the Act seeking reopening of the assessment, which notices are under challenge in the present writ petitions.

7. The facts in Civil Misc. Writ Petition No. 709 of 2001 are as follows:

The three brothers, namely, Lalit Kumar Agrawal, Raj Kamal Agrawal and Atul Kumar Agrawal, are assessed to tax in the status of Hindu Undivided Family whereas their wives, namely, Smt. Radha Agrawal, Smt. Rachna Agrawal and Smt. Niti Agrawal are assessed in their individual capacity for the assessment year 1996-97. Each of the petitioners filed Wealth Tax return with the Income Tax Officer, Ward Bijnor on 19-7-1996 declaring the following wealth:

Lalit Kumar Agrawal

Rs. 5,92,000

Raj Kamal Agrawal

Rs. 4,95,500

Atul Kumar Agrawal

Rs. 4,97,000

Smt. Radha Agrawal

Rs. 4,56,000

Smt. Rachna Agrawal

Rs. 7,04,500

Smt. Niti Agrawal

Rs. 7,04,500

They had also disclosed the amount of gift which they had received during the assessment year in question as under:

Lalit Kumar Agrawal

Rs. 5,02,000

Raj Kamal Agrawal

Rs. 5,00,500

Atul Kumar Agrawal

Rs. 5,02,000

Smt. Radha Agrawal

Rs. 5,01,000

Smt. Rachna Agrawal

Rs. 5,02,000

Smt. Niti Agrawal

Rs. 5,02,000

8. It is alleged that the returns were processed. Subsequently, the Wealth-tax Officer, Ward Bijnor issued notices u/s 16(2) of the Wealth-tax Act, 1957 as the case had been selected for scrutiny. The petitioners participated in the scrutiny proceedings and submitted their replies. They gave complete list. of the donors, their names, addresses and affidavits. They also filed copies of the gift tax return of the donors who have donated more than Rs. 30,000 to the petitioners. The Wealth-tax Officer, vide order dated 25-7-1996, after making full and complete enquiry accepted the returns under the Wealth- tax Act, 1957. The returns under the Income- tax Act which had been filed by each of the petitioners, were processed u/s 143(1)(a) of the Act except in the case of the petitioner No. 6, Smt. Niti Agrawal, who had not filed any Income Tax return during the year 1996-97 as her income was below the taxable limit. It appears that the Income Tax Officer, Ward Bijnor, respondent No. 1, had issued notices on 8-2-2001 calling upon the petitioners to show cause as to why proceedings u/s 147 of the Act be not initiated, upon which the petitioners submitted their replies. However, the Income Tax Officer, Ward Bijnor respondent No. 1, had issued notices on 15-3-2001 purporting to be u/s 148 of the Act as he had reasons to believe that the income had escaped assessment to tax. The notices had been issued after obtaining sanction from the Additional Commissioner of Income Tax, Moradabad Range, Moradabad. The notices dated 15-3-2001 are under challenge in the present writ petition.

9. We have heard Sri V.B. Upadhaya, learned Senior Counsel, assisted by Sri

Rakesh Ranjan Agrawal, on behalf of the petitioners, Sri A.N. Mahajan, learned Standing counsel appearing for the respondent in Civil Misc. Writ Petition Nos. 538 to 540 of 2001 and Sri Ashok Kumar, learned Standing counsel appearing for the respondents in Civil Misc. Writ Petition No. 709 of 2001.

10. Sri V.B. Upadhaya, learned Senior Counsel, submitted that, the gifts in question which are being sought to be taxed under the re-assessment proceedings, have been disclosed by the petitioners in their wealth tax return and the Wealth-tax Officer, Ward Bijnor who is the Assessing Authority, had examined the gifts in detail and after making necessary enquiry and after having been satisfied about the genuineness of the gift, had accepted the same while making assessment under the Wealth Tax Act. He, thus, submitted that the Income Tax Officer and the Wealth-tax Officer being the same person, it would be presumed that the gifts in question have been duly explained and accepted by the department and, therefore, no income has escaped assessment. The proceedings u/s 147/148 of the Act are, therefore, bad and without jurisdiction. According to him, the Assessing Authority had full knowledge of the gifts received by the petitioners and if he had any doubt, the assessment under the Income Tax Act would not have been made. According to him, assessment u/s 143(1)(a) of the Act is an assessment for all purposes and, therefore, the re-assessment proceedings are not permissible under law. He further submitted that there was no material which could lead the Income Tax Officer to have reasons to believe that the income of the petitioners have escaped assessment to tax. According to him, there is no such procedure for giving a notice prior to initiating proceedings u/s 147 of the Act and the entire proceedings have been taken for making a roving and fishing enquiry and upon a change of opinion, which is not permissible under law. In support of his aforesaid submissions, he has relied upon the following decisions:

- (i) Jagdish Prasad v. CIT (1976)104 ITR 214 ;
- (ii) M.R. Joshi (H.U.F.) Vs. Commissioner of Income Tax, Poona,
- (iii) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; and
- (iv) CIT v. Kalvinator of India Ltd. (2002) 256 ITR 12.

11. The learned Standing Counsel, however, submitted that the petitioners ought to have filed their return in response to the notice issued u/s 148 of the Act and contest the matter before the Income Tax Officer, Ward Bijnor and this court should not entertain the present petitions under article 226 of the Constitution of India. In support of his aforesaid submissions, he has relied upon a decision of the Apex court in the case of Redwood Hotel (P.) Ltd. Vs. Chief Commissioner of Income Tax and Others, .

12. He further submitted that the re-assessment proceedings begin only after service of notice u/s 148 of the Act and only thereafter the petitioners become a

party to the proceedings and before that they are not entitled to get a copy of the reasons at the stage of issuance of notice. According to him, only the relevancy of material for formation of belief that the income has escaped assessment can be gone into and not its sufficiency. Further, mere production of evidence before the Income Tax Officers not enough nor it is a true and full disclosure and merely because the petitioners have disclosed the alleged gifts received by them in the wealth tax proceeding, it cannot be treated that there had been a full and true disclosure under the Income Tax Act also. The two proceedings are entirely different in nature and merely because the Assessing Authority is one and same person, it would not mean that if the gifts have been verified or gone into in the wealth tax proceeding, it would be treated to have been gone into under the Income Tax Act as well. In support of his aforesaid submissions, he has relied upon the following decisions:

- (i) Vishnu Borewell Vs. Income Tax Officer and Another,
- (ii) Great Arts (P.) Ltd. v. ITO (2002) 257 ITR 6392; and
- (iii) Citibank N.A. Vs. S.K. Ojha and Others, .

13. Having heard the learned counsel for the parties, we find that in the present case the notice u/s 148 of the Act and the reasons which have been recorded for initiating proceedings for reassessment has been challenged on the ground that from the material on record the Income Tax Officer could not have formed any belief that any part of the income has escaped assessment to tax which is the prerequisite condition for assuming the jurisdiction of the Assessing Authority to initiate proceedings u/s 147/148 of the Act.

14. u/s 147 of the Act the proceedings for the assessment can be initiated only if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The question whether the assessing officer had reasons to believe is not a question of limitation only but is a question of jurisdiction, a vital thing, which can always be investigated by the court in an application under article 226 of the Constitution as held in Daulatram Rawatmal Vs. Income Tax Officer and Another, ; JAMNA LAL KABRA Vs. Income Tax OFFICER, B WARD, BAREILLY, AND OTHERS., ; Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, ; C.M. Rajgharia and Another Vs. Income Tax Officer and Others, and Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle "B", Nagpur,

15. The words "has reason to believe" are stronger than the words "is satisfied". The belief entertained by the assessing officer must not be arbitrary or irrational. It must be reasonable or, in other words, it must be based on reasons which are relevant and material as held by the Apex court in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, .

16. The expression "reason to believe" in section 147 does not mean purely subjective satisfaction on the part of the assessing officer. The belief must be

held in good faith; it cannot be merely a pretence. It is open to the court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the assessing officer in starting proceedings u/s 147 to challenge in a court of law as held in S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, ; Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, ; Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, ; Sowdagar Ahmed Khan (Deceased) (By his Legal representatives) Vs. Income Tax Officer, Nellore, , Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ; Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad, ; The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, and State of Punjab Vs. Balbir Singh, .

17. The formation of the required opinion and belief by the Officer is a condition precedent. Without such formation, he will not have jurisdiction to initiate proceedings u/s 147. The M10M this condition is not a mere formality but it is mandatory. The MM fulfil that condition would vitiate the entire proceedings as held by the Apex court in the case of Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax, and Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, . The reasons for the formation of the belief must have rational connection with or relevant bearing oil formation of belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the assessing officer and the formation of his belief that there has been escapement of income of the assessee from assessment in the year. It is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation belief relating to escapement of income of the assessee from as held by the Hon"ble Supreme Court in the case of Lakhmani Mewal Das (supra). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the assessing officer could not have reason to such a case, the notice issued by him would be liable to be struck down as invalid as held in the case of Ganga Saran & Sons. (P) Ltd. (supra).

18. In the case of GKN Driveshafts (India) Ltd. (supra) the Apex held as follows:

"When a notice u/s 148 of the Income Tax Act, 1961, is issued the proper course of action for the notice is to file the return and, if" desires, to seek reasons for issuing the notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and assessing officer is bound to dispose of the same by passing a speaking order.

On receiving notices u/s 148 the appellant filed the returns. The appellant also

received notices u/s 143(2) calling for further information on certain points in connection with the returns. Thereupon the appellant filed writ petitions challenging the notices. The High court dismissed the writ petitions holding that the petitions were premature and the appellant could raise its objections to the notices by filing reply to the notices before the assessing officer (see e.g. *G.K.N. Driveshafts (India) Ltd. Vs. Income Tax Officer and Others*, . The appellant preferred appeals and the Supreme Court dismissed the appeals, observing that since the reasons for reopening of assessments u/s 148 had been disclosed in respect of five assessment years, the assessing officer had to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessments for those years." (p. 19)

19. The Constitution Benches of the Hon''ble Supreme Court, in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, , *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, ; *Union of India (UOI) Vs. T.R. Varma*, ; *State of U.P. v. Mohammad Nooh* AIR 1958 SC 86 and *K.S. Venkataraman and Co. Vs. State of Madras*, , has held that article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision could not be adopted.

20. In *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, , the Hon''ble Supreme Court has held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principle of natural justice or where the orders of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

21. As held by the Apex court in the case of *Calcutta Discount Co. Ltd. (supra)*, this court under article 226 is entitled to go into the relevancy of the reasons as also to scrutinize as to whether there was reasonable belief or not.

22. In the case of *Comunidado of Chicalim v. ITO* (2001) 247 ITR 271, the Apex court had held that when an assessee challenges a notice to reopen an assessment u/s 147 of the Act on the ground (hat no reasons u/s 148 had been recorded or disclosed, the court must call for and examine the reason, and, in fact, ordinarily, the reasons are set out by the respondents to the writ petitioner in their counter.

23. In the case of *Foramer Vs. Commissioner of Income Tax and Another*, , this court has held that notice u/s 147 should not be given on mere change of opinion

and if notice u/s 148 was without jurisdiction the petitioner should not be relegated to the alternative remedy and tile writ petition was maintainable, which has been upheld by the Apex court in the civil appeal filed by the department reported in CIT v. Foramer France (2003) 264 1TR 5661.

24. In the case of Ajanta Pharma Ltd. Vs. Assistant Commissioner of Income Tax and Others, , the Bombay High Court has held that GKN Driveshafts (India) Ltd."s case (supra) nowhere lays down that (lie party is totally debarred from approaching the High Court under Article 226 of the Constitution of" India when the exercise of power by the authority u/s 148 of the Act, ex facie appears to be without jurisdiction. Undoubtedly, whether such an exercise is with or without jurisdiction will have to be revealed from the notice and reasons on the face thereof. At the same time, it is as well-settled, and Calcutta Discount Co. Ltd."s case (supra) is very clear oil the point, that mere availability of alternative relief" can be no bar for exercise of writ jurisdiction when the authorities seek to assume jurisdiction which they do not possess or act in totally arbitrary manner. The decision in GKN Driveshafts (India) Ltd."s case (supra) reminds the assessee that when a notice u/s 148 of the Act is issued the proper course of action is to file a reply with his objections including those in relation to the absence of jurisdiction. However, it does not lay down that when such an objection is in relation to the absence of jurisdiction and the same is revealed ex facie or apparent on the fact of a notice or reasons in support thereof, the assessee has compulsorily to invite an order from the assessing officer in relation to the absence of jurisdiction.

25. This Court, in Indra Prastha Chemicals (P.) Ltd. v. CIT (Civil Misc. Writ Petition No. 257 of 2004, dated 16-8-2004) and Sunil Kumar Jain v. ITO (Civil Misc. Writ Petition No. 851 of 1995, dated 5-11-2004) has repelled the similar arguments raised by the department.

26. Thus, it is well-settled that the "reason to believe" u/s 147 must be held in good faith and should have a rational connection and relevant bearing on the formation of the belief and should not be extraneous or irrelevant. Further this court in proceedings under article 226 of the Constitution of India can scrutinize the reasons recorded by the assessing officer for initiating the proceedings u/s 147/148 of the Act. The sufficiency of the material cannot be gone into but relevancy certainly be gone into. In view of the foregoing discussions, we are of the considered opinion that the writ petition under article 226 is maintainable.

27. It is well-settled that the proceedings under the Wealth Tax Act and the Income Tax Act are separate and merely because the Assessing Officer under the Wealth Tax Act and the Income Tax Act is one and the same person, would not mean that the scrutiny of materials /informations/ wealth under the Wealth Tax Act would debar the Assessing Authority from taking appropriate steps under the Income Tax Act. It may be mentioned here that under the Wealth Tax Act an assessee is required to disclose his wealth only. How that wealth has been formed, is not to be gone into and, therefore, the question of disclosing the gifts

in the return of wealth tax and its scrutiny in the assessment under the Wealth Tax Act, is of no consequence. It may be mentioned here that, according to the own showing of the petitioners, the return filed under the Act had been processed u/s 143(1)(a) of the Act.

28. u/s 143(1)(a) of the Act the assessing officer makes an assessment of the total income or loss of the assessee after making such adjustment to the income or loss declared in the return as are required to be made under clause (b) with reference to the return and documents accompanying it. The presence of the assessee is not required nor any document or evidence in support of the return is required to be produced. In the assessment u/s 143(1)(a) of the Act detailed inquiry relating to the income of an assessee is not made but is confined to the provisions of adjustments specified in clause (b) of section 143(1) of the Act.

29. u/s 147 of the Act, as substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989, the only requirement for taking proceeding is that the assessing officer should have reason to believe that any income chargeable to tax, has escaped assessment. However, where an assessment has been made under sub-section (3) of section 143, the action is required to be taken within four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for his assessment for that year. Explanation 1 provides that the production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. Therefore, it is not correct to say that the production of donors and materials to prove the alleged gifts before the Wealth-tax Officer in the proceedings under the Wealth Tax Act, would amount to full and true disclosure of the fact under the Income Tax Act also.

30. In the case of Jagdish Prasad (*supra*), the facts were that the assessee made a statement before the Income Tax Officer in the course of earlier assessment proceedings long before the assessment for the year 1943-44 was finalised on 7-2-1948 and as such escapement could not be attributed to any default on the part of the assessee. The Income Tax Officer had noticed the cash credit before 22-2-1947 and on that after considering the explanation of the assessee he had become aware of the true nature and source of deposit, namely, that they were the assessee's income from undisclosed sources. At that time, the assessment proceedings for the assessment year 1943-44 were pending and if the Income Tax Officer, was aware of the correct position, there would have been no difficulty in including them in the assessment for the year 1943-44. In that case the Income Tax Officer had brought to tax these cash credits in the assessment year 1944-45 and the Income Tax Appellate Tribunal had held that it was to be included if at all in the assessment year 1943-44. This court has held that it is true that the assessee did not disclose to the Income Tax Officer that the two

cash credits represented income from undisclosed source but that is not material. In spite of the efforts of the assessee to conceal the true nature and source of the cash credits the Income Tax Officer had become aware of the true facts on 22-2-1947. Once the primary facts were before him it was for him to draw a proper inference both of facts and law and to apply appropriate legal provisions.

31. In the case of Madnani Engineering Works Ltd. (supra) the Apex court has held that the respondent had produced all the hundis on the strength of which it had obtained loans from creditors as also entries in the books of account showing payment of interest and it was for the Income Tax Officer to investigate and determine whether these documents were genuine or not. The respondent could not be said to have failed to make a true and full disclosure of the material facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced by it were bogus and that there was no failure on the part of the respondent to disclose fully and truly all material facts necessary for its assessment and the condition for the applicability of section 147(a) was not satisfied.

32. In the case of Mohinder Singh Gill (supra) the Apex court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

33. In the case of Kalvinator of India Ltd. (supra) a Full Bench of the Delhi High Court has held that even after 1-4-1989 the amended section 147 does not confer jurisdiction upon the Assessing Authority to initiate proceedings u/s 147 of the Act on a mere change in the opinion. It has further held that an order of assessment can be passed either in terms of subsection (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind.

34. In the case of Vishnu Borewell (supra) the Orissa High Court has held that the expression "has reason to believe" in section 147 of the Act is stronger than the words "is satisfied". The belief must be based on reasons which are relevant and material. The court can examine whether the reasons are relevant and have a bearing on the matters with regard to which he is required to entertain the belief before he can issue notice u/s 148. If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the inevitable conclusion is that the assessing officer could not have reason to believe that any part of the income of the assessee had escaped assessment.

35. In the case of Great Arts (P) Ltd. (supra) the Delhi High Court has held as

follows:

"Under the extraordinary writ jurisdiction, interference is called for only in the event of there being any jurisdictional infirmity which goes to the root of the matter and not otherwise. At the stage of considering the validity of a notice of reassessment, the question is not whether what is stated in the information or the conclusion drawn, is true or not. The only question at this stage is about the relevancy of the material for formation of the requisite belief." (p. 640)

36. In the case of Citibank N.A. (supra), the Bombay High Court has held that mere production of evidence before the Income Tax Officer is not enough. There may be omission or failure to make a true and full disclosure, if "some material for the assessment lay embedded in the evidence which the revenue could have uncovered but did not, then it is the duty of the assessee to bring it to the notice of the Assessing Authority. If there are some primary facts from which a reasonable belief could be formed that there was some non-disclosure or failure to disclose fully and truly all material facts, the Income Tax Officer has jurisdiction to reopen the assessment.

37. Applying the principles laid down in the aforesaid case to the facts of the present case, we find that in the return filed under the Income Tax Act, none of the petitioners has disclosed the amount of gift received by them nor there had been any scrutiny by the Income Tax Officer. The assessment have been made u/s 143(1)(a) of the Act and as already mentioned earlier, these assessments are to be made within the framework of the provisions of section 143(1) of the Act itself. Under the aforesaid provision, the Income-tax Officer neither calls upon the assess cc to appear personally nor for production of any document. The assessment is made on the basis of return after making certain adjustments. There is no scrutiny at all. The petitioners cannot take advantage of the scrutiny done by the Wealth-tax Officer in the proceedings under the Wealth Tax Act, regarding these gifts. The officer may be the same but the proceedings are entirely different and, therefore, if "the conditions mentioned in section 147 of the Act are fulfilled, the jurisdiction can be validly exercised in such a case. From the material and records which were before the Income Tax Officer, lie had information that each of the petitioners had disclosed in their wealth-tax return to have received huge amount of gifts running into several lakhs of rupees which had not been disclosed by them in their Income Tax returns. The genuineness of the gifts, the capacity of (he donors, the necessity of making gifts by strangers vis-a-vis sections 69 and 69A of the Act do constitute relevant material for forming the reasonable belief that the income has escaped assessment to tax. There is no question of improving upon the reasons recorded by the Income Tax Officer by means of an affidavit. In the present case, we are of the considered opinion that the Income Tax Officer had material before him to form a reasonable belief that the income had escaped assessment.

38. In view of the foregoing discussions, we do not find any merit in these petitions. They are hereby dismissed with costs which we assess at Rs. 5,000

payable by each of the petitioners.