

(1986) 12 CAL CK 0013

In the Calcutta High Court

Case No : Income-tax Reference No. 182 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Dwarka Prosad Bazaz

RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:

Income Tax Act, 1961 — Section 131, 147

Citation : (1987) 63 CTR 56 : (1987) 168 ITR 572 : (1987) 32 TAXMAN 249

Hon'ble Judges : Monjula Bose, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : A.N. Bhattacharji, for the Appellant; R.N. Dutt, for the Respondent

Judgement

Dipak Kumar Sen, J.—Dwarka Prosad Bazaz, the assessee, was a partner of Mahadeolal Ramniwas, a firm. In the assessment year 1964-65, the previous year ending on November 15, 1963, the said firm was dissolved and the assessee took over the business of the said firm as the sole proprietor thereof.

2. In the said assessment year, the assessee was assessed to Income Tax and the share of the income from the said firm which was allocated to the assessee was included in the total income of the assessee.

3. In the books of account of the firm, there were four cash credits respectively of Rs. 1 lakh, Rs. 1 lakh, Rs. 25,000 and Rs. 75,000 standing in the respective names of Govindram Ramnarayan Das, N. K. Sharaff, B. H. Sharaff and Babulal Kasera. It appears that at the time of assessment of the firm or that of the assessee, confirmation letters from the said creditors, the GIR numbers of their files as also the designation of the Income Tax Officers in whose jurisdiction the said creditors were being assessed were furnished. The said loans were accepted and the assessment was completed on September 30, 1966, accordingly by the Income Tax Officer, "C" Ward, Asansol.

4. Subsequently, it appears that the Income Tax Officer, "C" Ward, Asansol, received a letter from the Income Tax Officer, Additional, "F" Ward, Asansol,

dated August 22, 1971/September 2, 1971, where it was stated, inter alia, as follows :

"Your above assessee had loan transactions with the following loan creditors during the assessment year 1963-64 and earlier years :

1. Shri N. K. Sharaff, 23/24 Radhabazar St., Calcutta, assessed by the Income Tax Officer, "D" Ward, Howrah, from file No. A-348.
2. B. N. Sharaff, 23/24, Radhabazar St., Calcutta, assessed by the Income Tax Officer, "D" Ward, Howrah, from file No. S-1194.
3. Govindram Ramnarayan Das with H. O. at Hissar and Branch at Chittaranjan Road, Calcutta, assessed by the Income Tax Officer "A" Ward, Hissar.

The Income Tax Officer, "D" Ward, Howrah, has intimated by letter dated May 21, 1971, that the Sharaffs filed disclosure petitions u/s 271(4A) on March 29, 1966, declaring that the transactions with your above assessee were entirely fictitious having been made in order to shield your assessee for utilisation of his own undisclosed money and thereby they earned commission for such business.

5. The Income Tax Officer, "A" Ward, Hissar, by his letter dated July 20, 1971, has intimated that Govindram Ramnarayan Das has done hawala business and he advanced a loan of Rs. 1,00,000 to your above assessee. You are, therefore, requested to take action against your assessee immediately. In this connection, it is also mentioned that if it is found that loans are brought forward from earlier years from the firm assessed from different files, necessary action may also be taken."

6. On the basis of the aforesaid, the Income Tax Officer, "C" Ward, initiated reassessment proceedings u/s 147 of the Income Tax Act, 1961 ("the Act"). It was recorded by the Income Tax Officer that the reasons for reopening the said assessment were as follows :

"The accounts of the assessee show that three loan creditors advanced loan of Rs. 2,25,000 in the aggregate to the assessee during the previous year. A sum of Rs. 4,326.03 was charged as interest on the above loan. The loans were accepted as genuine and payment of interest was also allowed in the original assessment as per evidence produced by the assessee. Subsequently, it has been detected that the entire loan of Rs. 2,25,000 is fictitious and represents the assessee's income from some undisclosed sources."

On the basis of the aforesaid, the Income Tax Officer obtained the approval of the Commissioner.

7. The assessee furnished a fresh return of his income for the said assessment year on February 19, 1972, under protest. At the reassessment proceedings, the assessee was called upon to produce the creditors or their representatives for being examined on oath and also to furnish the current addresses of the said creditors. The assessee was unable to do so. Notices u/s 131 of the Act were

issued but some of them came back unserved with the postal endorsement "left". The assessee was informed that it was proposed to add to his income the amounts of the said loans aggregating to Rs. 3 lakhs together with interest of Rs. 6,092.70 under the head "Income from other sources". The assessee was asked to comment on the said proposal. The assessee stated in his reply that it was not possible for him to state anything further and wanted an opportunity to cross-examine the creditors. The Income Tax Officer held that the burden was on the assessee to prove the genuineness of the loans and that he had been allowed sufficient time and opportunity to produce them. It was held that the Revenue was under no obligation to give further opportunity to the assessee for cross-examining the creditors. The Income Tax Officer took note of the fact that the creditors have confessed that the transactions with the assessee were bogus and accordingly the amounts of the said loans together with interest were added to the total income of the assessee. It is recorded in the order of assessment that the confessions of the creditors were before the Income Tax Officer and had been kept separately with the endorsement "not for the assessee".

8. Being aggrieved, the assessee preferred an appeal from the order of reassessment to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner found that the Income Tax Officer had failed to compel the creditors to appear before him so that they could be cross-examined. He further found that the assessee had proved the genuineness of the loans primarily by proving the identity of the creditors by establishing their creditworthiness and by obtaining confirmation of the loans. He noted that the Income Tax Officer had gathered information behind the back of the assessee but did not give any opportunity to the assessee to consider the same or to cross-examine the creditors. He held that the addition of the said amount of Rs. 3,06,093 in the total income of the assessee was unwarranted. He held further that the loans were accepted in the original assessment and subsequently it was on the basis of suspicion and not on the basis of firm belief that the case was reopened.

9. Being aggrieved by the order of the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the Revenue that the information had been given to the Income Tax Officer concerned by the Income Tax Officer, Additional, "F" Ward, Asansol, by his letter dated August 26, 1971. It was contended further that in the reassessment proceedings, the Income Tax Officer concerned had required the assessee to produce the creditors and to furnish their current addresses on more than one occasion which the assessee failed to do. The assessee, therefore, failed to discharge the initial onus cast on him. It was submitted that the addition of the disputed amount to the total income of the assessee as income from undisclosed sources was fully justified.

10. It was contended on behalf of the assessee that at the original assessment, the assessee had furnished the confirmation letters, GIR numbers of the files as also the designation of the Income Tax Officers in whose jurisdiction the creditors

were assessed. It was contended that the statements contained in the letter received from the Income Tax Officer, Additional, "F" Ward, Asansol, and the conclusions reached by the Income Tax Officer concerned on the basis thereof had no nexus. The said letter of the Income Tax Officer, Additional, "F" Ward, Asansol, was vague and did not contain any material on the basis of which the Income Tax Officer could come to the conclusion that any income of the assessee had escaped assessment on account of the assessee's failure to disclose material facts truly and fully. It was further contended on behalf of the assessee that none of the materials in the possession of the Income Tax Officer was made available to the assessee.

11. On a consideration of several decisions which were cited, the Tribunal held that from the reasons as recorded by the Income Tax Officer it was not clear how a detection was made that the loans in question were fictitious and represented the assessee's income from undisclosed sources. There was no reference in the recorded reasons of the said letter from the Income Tax Officer, Additional, "F" Ward, Asansol, nor was there any reference to the alleged confession of the creditors before their respective Income Tax Officers. The only evidence which the Income Tax Officer concerned had was the letter from the Income Tax Officer, Additional, "F" Ward, Asansol. From the said letter, it appeared that the Income Tax Officer, "F" Ward, Asansol, had in turn received information from the Income Tax Officer, "D" Ward, Howrah, and the Income Tax Officer, "A" Ward, Hissar. The Income Tax Officer concerned did not even obtain a copy of the original letters of the Income Tax Officers of Howrah and Hissar, nor did he ascertain from the creditors any confirmation of their confessional statements made. The Tribunal held that there was no nexus or link between the information of the Income Tax Officer concerned and his belief that the income of the assessee had escaped assessment.

12. The Tribunal recorded that it was admitted by the Revenue that the materials available to the Income Tax Officer and on the basis of which he proceeded were not made available to the assessee. Neither the copies of the letters of the Income Tax Officer, Additional, "F" Ward, Asansol, nor the confessions of the creditors were supplied to the assessee. The Tribunal noted further that only in respect of one of the creditors the summons issued by the Income Tax Officer was returned unserved. No steps were taken to make available the other creditors in the proceedings. The Tribunal came to the conclusion that the Revenue had failed to establish that the loans standing in the books of the assessee were the assessee's income from undisclosed sources.

13. On an application of the Revenue u/s 256(2) of the Act, the Tribunal as directed has referred the following questions as questions of law arising out of its order for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that initiation of proceedings u/s 147(a) of the Income Tax Act, 1961, was unjustified ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition of Rs. 3,06,093 on the ground that the concealment of income was not established by the Revenue ?"

At the hearing before us, learned advocate for the Revenue submitted that there was sufficient material before the Income Tax Officer concerned to come to a reasonable belief that the income of the assessee had escaped assessment and to initiate the reassessment proceedings thereon. He submitted that if there was some material before the Income Tax Officer in support of his belief, the sufficiency or adequacy thereof could not be further gone into. He submitted that on similar facts different High Courts had upheld the initiation and validity of the reassessment proceedings. In support of his contentions, learned advocate for the Revenue cited the following decisions :

(a) Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, : In this case, the question before the Supreme Court was whether the Commissioner had jurisdiction u/s 33B of the Indian Income Tax Act, 1922 ("the 1922 Act"), to cancel an assessment where an income disclosed by the assessee was held to be not his income but was income assessable in the hands of some other person. This decision has no application in the instant case.

(b) Biju Patnaik Vs. Income Tax Officer, : In this case, the Income Tax Officer sought to reopen an assessment u/s 147. The reasons recorded by the Income Tax Officer which were placed before the Commissioner for obtaining sanction were, inter alia, that a number of hundi loans had been recorded in the books of account of the assessee in the names of various lenders. The loans were accepted as genuine in the original assessment. Subsequently, information was obtained that the lenders indulged in the business of granting bogus accommodation and that some of them confessed that the loans shown to have been given to the assessee were bogus. On these facts, it was held by a Division Bench of this court that there was sufficient material in the hands of the Income Tax Officer on the basis of which he could come to a reasonable belief that the income of the assessee had escaped assessment by reason of failure on his part to disclose truly and fully all material facts.

(c) Lakshmi Chand Swaika Vs. Income Tax Officer, "B" Ward and Others, : In this case, a notice issued u/s 148 of the Act seeking to reopen the assessment was challenged by a writ petition. The reasons on which the assessment was sought to be reopened were, inter alia, recorded as follows : During the relevant year, the assessee introduced cash credits in his books shown to have been borrowed from one R. A. Goel, a confessed name-lender. It was further recorded that the said cash credits represented the income of the assessee from such undisclosed source which escaped assessment on account of failure on the part of the assessee to disclose truly and fully all material facts at the time of the original assessment. The recorded reasons were explained further in the affidavit filed on behalf of the Income Tax Officer in which evidence of the name-lender was annexed.

14. A learned judge of this court came to the conclusion that there was sufficient material before the Income Tax Officer on which he could come to hold the reasonable belief that the income of the assessee had escaped assessment on account of the omission or failure on the part of the assessee to disclose truly and fully all basic and primary facts.

(d) Frontier Trading Company Vs. P.N. Chaudhry, Income Tax Officer and Another, : In this case, a proceeding for reopening an assessment u/s 147 was impugned in a writ petition. The reasons as recorded were, inter alia, that after finalisation of the assessment where a particular loan was accepted as genuine, the creditor made a statement before the Income Tax Officer that his loans to various parties including the assessee were not genuine. It was held by the High Court that the Income Tax Officer had material in his hands on the basis of which he could have reason to believe that the income of the assessee had escaped assessment.

(e) Shiv Saran Krishan Kumar Vs. Commissioner of Income Tax, Delhi, :

In this case, an assessment was reopened on the ground that one of the creditors from whom an advance was shown to have been made to the assessee during the relevant assessment year was alleged to be a ghost firm in a declaration filed by an advocate. The reopening of the assessment was sustained by the Tribunal which remanded the matter to the Appellate Assistant Commissioner to determine the genuineness of the credit. On a reference, the decision of the Tribunal was affirmed by a Division Bench of the Delhi High Court which held that the assessment could be reopened u/s 147 on the assumption that the creditor was a non-existent entity.

(f) Biswanath Pasari Vs. Income Tax Officer, "B" Ward and Others, : In this case, initiation of proceedings for reassessment by notice issued u/s 148 was challenged in a writ petition in this court. The learned judge on the facts of the case held that there were materials before the Income Tax Officer on which he could validly initiate proceedings for, reassessment. The grounds on which the reassessment was initiated in this case do not appear from the judgment and as such this decision is not of assistance in the case before us.

The learned advocate for the assessee contended to the contrary. He submitted that the Tribunal has found that the grounds on the basis of which the Income Tax Officer concerned initiated the reassessment proceedings were inadequate. On the materials before the Income Tax Officer, his belief that the income of the assessee had escaped assessment on account of his failure to disclose fully and truly all material facts was not established. He submitted further that, in any event, the reassessment was bad inasmuch as the same had been concluded without giving any opportunity to the assessee to deal with the evidence or material which had been collected by the Revenue behind the back of the assessee, nor was any opportunity given to the assessee to cross-examine the creditors on their confession. In support of his contentions, learned advocate for

the assessee cited the following decisions :

(a) Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, : In this case, the reasons which were recorded for the purpose of reopening an assessment were, inter alia, that the assessee who was a managing director of a number of companies at the relevant time was believed to have received a sum of Rs. 22 lakhs from a group, which sum or a part of which represented his income which had escaped assessment. On these facts, it was found by the High Court and ultimately by the Supreme Court that the materials disclosed could not form the basis of a reasonable belief that any income of the assessee had escaped assessment. The Supreme Court laid down that the Income Tax Officer must come to a bona fide belief and could not act on mere suspicion, gossip or rumour. It was held that the requirements for reopening an assessment were not satisfied.

(b) Sitaram Jindal Vs. Income Tax Officer, "E" Ward and Others, : In this case, an assessment was sought to be reopened by the Income Tax Officer by a notice u/s 148. The proceedings were challenged in a writ petition in this court. It was found that the Income Tax Officer concerned had received a letter from another Income Tax Officer where it was stated that in the proceedings for registration of a firm u/s 26A of the 1922 Act, it was held that the assessee's wife who was a partner in the said firm was merely a benamidar of the assessee and that the income of the assessee's wife should be included in the total income of the assessee. It was held by a learned judge of this court that the Income Tax Officer before whom the proceedings for registration of the firm were held could only form a tentative view as regards the benami character of the wife of the assessee. The Income Tax Officer who was dealing with the assessment of the assessee did not himself apply his mind to any fact to come to the belief that there had been omission or failure on the part of the assessee to disclose the primary or material facts necessary for the assessment. It was held that the conditions necessary for issue of the notice u/s 148 were not satisfied and the notice was declared to be invalid.

(c) Madanlal Jindal Vs. Income Tax Officer, "C" Ward and Others, : In this case, the wife of the assessee claimed to be a partner in a firm. The Income Tax Officer dealing with the assessment of the said firm passed an order where the wife of the assessee was treated as a benamidar of the assessee. Thereafter, the Income Tax Officer who was dealing with the firm wrote a letter to the Income Tax Officer dealing with the assessee informing the latter of the order which has been passed in respect of the assessee's wife relating to the firm, requested the latter to note that the income of the wife of the assessee or her share of the income of the firm should be clubbed in the hands of the assessee and to reopen the assessment of the assessee,

The assessment of the assessee for the relevant assessment year which had been completed was sought to be reopened u/s 147. The assessee challenged the proceedings by a writ petition. It was held by a learned judge of this court,

following the decision in *Sitaram Jindal Vs. Income Tax Officer, "E" Ward and Others*, , where the same firm was involved, that in the reasons recorded for reopening, there was no indication as to the source of the material for the formation of the belief of the Income Tax Officer that the income of the assessee had escaped assessment. It was also held that the Income Tax Officer concerned had made no efforts to form an independent belief but had merely acted on the suggestion of the Income Tax Officer who was dealing with the firm. The impugned reassessment proceedings were quashed.

(d) *Income Tax Officer, "G" Ward Vs. Dwarkadas Shah Brothers (P.) Ltd.*, : In this case, the reassessment proceedings, which were challenged by writ petition in this court, were initiated on the basis of the reasons recorded, inter alia, as follows (p. 530):

"...it appears that the assessee had unsecured loans amounting to Rs. 3,90,697. On the basis of records available, some of these loans are from parties who have declared before the Department that they were doing name-lending business..... I have reason to believe that owing to inaccurate particulars furnished by the assessee, income has escaped assessment..."

The statement of one of the creditors recorded u/s 131 and produced at the hearing of the writ petition was as follows (p. 530) :

"I am affirming that all the hundi loan transactions that might be attributed to me and might be shown in any party's book as taken from me are bogus and in no instance had I lent any money against hundies. During the entire period 1952 or 1953 to March 31, 1965, whatever hundi loans appeared in my name in any party at Calcutta, Delhi, Bombay or in any other place, these loans were not really loans and I acted merely as name-lender."

In the balance-sheet of the assessee, only the amount of sundry loans were disclosed. The names of the creditors were not mentioned. It was also not alleged or recorded that the assessee had taken any loan from the persons who had made the above declaration. It was also not stated that the said statement was ever received by the Income Tax Officer who was dealing with the case of the assessee. On this ground, it was held that there was no material or fact which could form the basis or reason on which the Income Tax Officer could come to hold the belief that the income of the assessee had escaped assessment. It was held that the conditions precedent for reopening of the assessment had not been fulfilled and the proceedings were quashed. The decision of the first court was confirmed on appeal by a Division Bench.

(e) *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, : In this case, the reasons recorded for reopening of an assessment u/s 147 on the basis of which the sanction of the Commissioner was sought were, inter alia, as follows (p. 441):

"There are hundi loan credits in the names ,of Narayansing Nandalal, D. K.

Naraindas, Bhagwandas Srichand, etc., who are known name-lenders, and also hundi loan credit in the name, Mohansingh Kanyalal, who has since confessed he was doing only name-lending. In the original assessment, these credits were not investigated in detail. As the information regarding the bogus nature of these credits is since known, action u/s 147(a) is called for to reopen the assessment and assess these credits as the undisclosed income of the assessee..."

On these facts, it was held by the Supreme Court on an appeal from a decision of the Full Bench of this court that the grounds as recorded could not have led to the formation of the belief by the Income Tax Officer that the income of the assessee had escaped assessment because of the failure or omission of the assessee to disclose fully and truly all material facts. The Supreme Court observed that assessment could not be reopened on the basis of information which was vague, indefinite, far-fetched and remote. It was held further that the reasons for the formation of the belief must be held in good faith.

(f) Panchanan Hati Vs. Commissioner of Income Tax, : In this case, the reasons recorded for reopening of an assessment were as follows (p. 338):

"It was revealed in the course of investigation at subsequent stages that there were cash credits in the assessee's books of hundi loans in the accounts of bogus parties who by their confession made before the Department at subsequent stages had stated that they had acted as name-lenders for third parties" accounts. This material fact necessary for assessment was kept concealed by the assessee at the original assessment stage."

It was held by a Division Bench of this court, to which I was a party, that on the basis of the reasons recorded, the Income Tax Officer had no reasonable ground to believe that any income of the assessee had escaped assessment on account of the failure of the assessee to disclose material facts fully and truly.

(g) Income Tax Officer and Others Vs. Madhani Engineering Works Ltd., Calcutta, : In this case, the Income Tax Officer contended that he initiated proceedings for reopening of a completed assessment u/s 147 for the following reasons (at p. 3) :

"In the course of assessment of the petitioner for assessment year 1963-64, it was discovered that various items shown as loans against the security of hundis in the petitioner's books of account for the previous year relevant to assessment year 1959-60 were in fact fictitious. Credits against the names of certain persons as having advanced loans, viz., Amarlal, Moolchand, Girdharidas, Raghoomal, Murlidhar, Kanhaiyalal and Deudaram Basdeo in the petitioner's books were found not to be genuine. It appeared during assessment proceedings for 1963-64 that none of such loans was genuine. In the premises, it appeared to me that the petitioner had failed to disclose fully and truly all material facts necessary for its assessment, and a portion of the petitioner's income had escaped assessment by reason of such failure."

The reassessment proceedings were challenged by way of a writ petition. The petition was dismissed in the first court but was allowed on an appeal by a Division Bench. On further appeal, the Supreme Court affirmed the decision of the Division Bench. The Supreme Court held that the assessee had disclosed all material facts at the time of the original assessment. The Supreme Court held further that the Income Tax Officer did not disclose any material on the basis of which he could contend that he had come to hold the belief that any taxable income of the assessee had escaped assessment.

15. On question No. 2, learned advocate for the assessee cited the following decisions:

(a) C. Vasantlal and Co. Vs. Commissioner of Income Tax, Bombay City, : This decision of the Supreme Court was cited for the following observation (p. 209): "The Income Tax Officer is not bound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private enquiry, But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it....."

(b) Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills, : In this case, a proceeding under the Orissa Sales Tax Act, 1947, initiated by a notice u/s 12(8) of the said Act was impugned. In appeal, before the Supreme Court, it was held on a construction of Section 12(8) that it was not necessary to record the reasons for which the notice was issued in the notice itself and that failure to do so will not invalidate the notice. The Supreme Court, however, observed as follows (p. 15):

"At the same time, we would like to make it clear that if the Sales Tax Officer is in possession of material which he proposes to use against the dealer in proceedings for reassessment, the said officer must before using that material bring it to the notice of the dealer and give him adequate opportunity to explain and answer the case on the basis of that material."

On a consideration of the facts and circumstances, the decisions cited and the respective submissions of the parties, it appears to us that the detection that the income of the assessee had escaped assessment in this case, if any, was made by the Income Tax Officers of Howrah and Hissar. The communication came from the said Income Tax Officers to the Income Tax Officer, Additional, "F" Ward, Asansol, who, in turn, conveyed the information to the Income Tax Officer concerned. The Income Tax Officer in this case acted on what can be termed as third-hand information. He did not himself examine any of the primary materials including the disclosure by the creditor before initiating proceedings for reassessment. The original letters of the Income Tax Officers of Howrah and Hissar had reached the Income Tax Officer, Additional, "F" Ward, Asansol. There is no reason why the Income Tax Officer did not consider the said original letters at all, inasmuch as he was also posted at Asansol. He did not mention the letters

or the disclosure in the reasons recorded by him. In the reasons which he recorded it was only stated that it has been detected that the entire loan amount of Rs. 2,25,000 was fictitious and represented the assessee's income from some undisclosed sources. It is not his case that he had detected the same. Therefore, it was necessary for him to at least refer to the primary materials on the basis of which he was forming his belief. As already noted, the Income Tax Officer, Additional, "F" Ward, Asansol, had suggested in his letter that action should be taken against the assessee on the basis of the aforesaid letters of the Income Tax Officers of Howrah and Hissar. It appears to us that the Income Tax Officer concerned did not apply his mind independently and followed the suggestion.

16. We also note that the Tribunal has found as a fact that only one of the notices u/s 131 came back unserved. No further steps were taken by the Income Tax Officer to produce the other creditors at the reassessment proceedings. It stands admitted by the Revenue that the materials before the Income Tax Officer on the basis of which he proposed to reassess were never disclosed to the assessee. Apart from cross-examination, the assessee was not able to consider nor make any representation against the same. The confessions of the creditors were kept out of the knowledge of the assessee.

17. From the decisions which have been cited before us, it appears that the law is settled that whether the Income Tax Officer had sufficient materials to come to a reasonable belief that income of any assessee had escaped assessment on account of the assessee's failure to disclose all material facts truly or fully will depend on the facts and circumstances of each case. No general rule can be laid down.

18. On the facts and in the circumstances of this case, it appears to us that the conclusion of the Tribunal that the Income Tax Officer concerned did not have sufficient or valid reasons to come to the conclusion that the income of the assessee had escaped assessment on account of the assessee's failure to disclose fully or truly all material facts is justified and does not require any interference from us. We also hold that the assessee was not given any opportunity whatsoever to make his representations in the reassessment proceedings by reason of the non-disclosure of the materials on the basis of which the Revenue proceeded. We note that in the recorded reasons, the Income Tax Officer concerned did not even note that on the basis of the materials in his hands he had come to hold a belief that any income of the assessee had escaped assessment.

19. For the reasons as aforesaid, we are unable to accept the contentions of the Revenue. We answer both the questions in the affirmative and in favour of the assessee.

20. There will be no order as to costs.

Monjula Bose, J.

21. I agree.