
(2006) 10 AHC CK 0055
In the Allahabad High Court

Commissioner of Income Tax

APPELLANT

Vs

Smt. Munia Devi Jain

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 153, 480
Income Tax Act, 1961 — Section 139, 143, 144, 146, 147
Land Acquisition Act, 1894 — Section 18
Penal Code, 1860 (IPC) — Section 193, 2, 228

Citation : (2006) 10 AHC CK 0055

Hon'ble Judges : Vikram Nath, J; R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—In both the Income Tax References, the Income Tax Appellate Tribunal, Delhi, (hereinafter referred to as "the Tribunal") has referred the following two identical questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the pendency of proceedings for enhancement of compensation for acquisition of land was not a material fact that was required to be disclosed by the assessee in the assessment proceedings and, therefore, the reopening of assessments u/s 147(a) of the Income Tax Act, 1961 for non-disclosure of the aforesaid fact was invalid?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the order of the U.P. Avas Evam Vikas Parishad Tribunal was not one of the nature described in Section 153(3)(ii) and, therefore, the said section did not enlarge the limitation either for the reopening of the assessments or for their completion ?

2. In Income Tax Reference No. 166 of 1989, a common reference has been made against six assessees for different assessment years. In respect of Smt.

Munia Devi Jain, the assessment years involved are 1973-74, 1977-78 to 1980-81; in respect of Rajinder Chand Jain, Kishan Chand Jain and Inder Chand Jain, the assessment year is 1980-81 whereas in respect of Narain Das Jain deceased through legal heir Inder Chand Jain the assessment years are 1973-74 to 1976-77. In Income Tax Reference No. 254 of 1991 a common reference has been made against five assessee for various assessment years. In respect of Smt. Munia Devi Jain, the assessment year is 1976-77 whereas in respect of Kishan Chand Jain, Rakesh Kumar Jain, Rajender Chand Jain and Inder Chand Jain, the assessment years are 1976-77 to 1979-80.

3. Briefly stated, the facts giving rise to the present references are as follows:

Assessment in all the aforesaid cases had earlier been made u/s 143(3) of the Act on various dates. The assesseees owned certain land which had been acquired and compensation had already been awarded by the Collector. When the assessment for the years in question was made, proceedings for enhancement of compensation at the instance of the assesseees were pending before the U.P. Avas Evam Vikas Parishad Tribunal (hereinafter referred to as "the Avas Tribunal"). The Tribunal, vide award dated 25.5.1981, enhanced the compensation to be given to the assesseees and also awarded interest on enhanced compensation. Under the award, the assesseees became entitled to varying amount of interest for the period relating to various previous years relevant to the assessment years in question. The Income Tax Officer initiated proceedings u/s 147(a) of the Act and issued notices u/s 148 of the Act for all the years in question. In pursuance of the notices u/s 148 of the Act, the assesseees filed returns of income declaring their income at the same amount at which their income had been determined in the assessment made u/s 143(3). The assesseees claimed that action u/s 147/148 could not be legally taken but this objection was overruled by the Income Tax Officer. The assesseees appealed before the Appellate Assistant Commissioner, Agra but failed. The assesseees went up in appeal before the Tribunal. The assesseees contended that u/s 147(a) of the Act action could not be taken against them because there was no failure on their part to disclose fully and truly all material facts necessary for their assessments. On the other hand, the Revenue contended that the pendency of the proceedings before the Avas Tribunal for enhancement of compensation was a material fact which the assesseees should have disclosed during the assessment proceedings before the Income Tax Officer and which they admittedly failed to disclose. According to the assesseees, this was not a material fact which was required to be disclosed by the assesseees. The Tribunal agreed with the contentions of the assesseees and held that pendency of proceedings for enhancement of compensation was not a material fact that was required to be disclosed by the assesseees and, therefore, the action taken u/s 147(a) of the Act was invalid. The Tribunal, in paragraphs 7 and 8 of its order, has recorded the following findings:

7. As is evident from the facts narrated above, assessments for all the years under appeal had initially been completed u/s 143. Reopening of assessments

under Sub-clause (a) of Section 147 is permissible in a case where the assessee did not file a return or the assessee failed to disclose fully and truly all material facts necessary for his assessment. Action for reassessments under Sub-clause (b) of Section 147 is permissible where there has been no omission or failure, as mentioned in Clause (a) on the part of the assessee but the Income Tax Officer has, in consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment for any assessment year. In the case before us, the material fact that is said to have been suppressed by the assessee is that it had moved the U.P. Awas Evam Vikas Parishad Tribunal for enhancement of compensation. The award by the said Tribunal had been made on 25.5.1981 while the assessment for the assessment year 1981-82 was made more than six months after, i.e., on the 30th November, 1981. therefore, so far as assessment year 1981-82 is concerned, the assessee had become entitled to a certain amount of interest which was taxable as its income for that year and patently till the assessment was Completed the assessee did not inform the Income Tax Officer of the coming into existence of income. Therefore, so far as assessment year 1981-82 is concerned, there is a clear default on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year and action u/s 147(a) for this year was legally permissible and was, in our view, validly taken.

8. As regards the other assessment years, we have to see whether the pendency of the proceedings for enhancement of compensation was a material fact that the assessee should have disclosed during the assessment proceedings. So far as the amount of interest relevant to assessment years under consideration is concerned, patently the award had not been made till the assessments were originally made and it was impossible for the assessee to disclose the amount of interest. In Rai Singh Deb Singh Bist and Another Vs. Union of India (UOI) and Others, the Hon''ble High Court of Delhi held that facts that come into existence subsequent to original assessment cannot possibly be disclosed and, therefore, a fact which comes into existence subsequent to the making of assessment cannot be a material fact within the purview of Section 34(1)(a) of the 1922 Act (equivalent to Section 147(a) of the 1961 Act). In T.M. Kousali Vs. Sixth Income Tax Officer, Hon''ble the Karnataka High Court held that proceedings cannot be initiated u/s 147(a) to assess amounts awarded as enhanced compensation after the assessments had already been made. That was a case in which like the case before us, the amount of interest arising from the compensation awarded was sought to be taxed in the reassessments. In Mukhtiar Singh Sandhu v. ITO (1985) 160 ITR 521 the Hon''ble Punjab and Haryana High Court also dealt with a similar controversy and held that there was no failure to disclose fully and truly all material facts. In this case also when the assessee filed his returns, his application u/s 18 of the Land Acquisition Act was pending with the District Judge and the assessee during the assessment proceedings had not mentioned anything with regard to the pendency of the application u/s 18 of the Land Acquisition Act. In Ganesh Chandra Khan Vs. Income Tax Officer, "A" Ward and

Another, Hon"ble the Calcutta High Court held that where in respect of house occupied by the government and later requisitioned, compensation for house for the previous years was fixed by agreement and the assessee was till the assessments were made not aware of compensation becoming payable, the assessments could not be reopened u/s 147/148. Thus, in the case before us so far as the amount of interest is concerned, the assessee could not have disclosed the same in the proceedings for assessments years 1973-74 and 1977-78 to 1980-81 and consequently she cannot be accused of any failure on her part. So far as the pendency of the proceedings for enhancement of compensation are concerned, in the case of T.M. Kousali (supra) the Hon"ble Karnataka High Court has specifically held that the pendency of the proceedings was not a material fact that was required to be disclosed during the assessment proceedings. The same is the view taken by Hon"ble the Punjab and Haryana High Court in the case of Mukhtiar Singh Sandhu (supra) in which the case of T.M. Kousali (supra) has been referred to. The learned Departmental Representative did not cite any authority to the contrary nor did he point out how the mere fact of pendency of proceedings could have changed the quantum of income assessed in the original assessments so that it could be said that it was a material fact for the assessment of income for those years. We, therefore, hold that for assessment years 1973-74 and 1977-78 to 1980-81 there was no failure on the part of the assessee to disclose all material facts necessary for her assessment for those years within the meaning of Section 147(a) and consequently we hold that action for reassessments for those years u/s 147(a) was invalid.

4. In the alternative, it was contended on behalf of the Revenue that by virtue of Section 153(3)(ii) of the Act the assessment could be made at any time in order to give effect to the findings of the Tribunal which allowed the compensation and interest thereon to the assessees. The Income Tax Appellate Tribunal negated the contention of the Revenue holding that the order of the Tribunal granting enhanced compensation and interest thereon, was not a finding or direction contemplated by Section 153(3)(ii) of the Act and it did not enlarge the limitation either for reopening the assessment or for their completion. The finding of the Tribunal are recorded in para 10, 11 and 12 of its order and are reproduced below:

10. We may also here deal with an argument raised by the learned Departmental Representative that u/s 153(3)(ii), the assessments could be made at any time. Section 153 deals with the time limit for completion of assessments and re-assessments. Section 153(1) prescribes limitation for assessments u/s 143 and 144 while Sub-section (2) thereof prescribes the limits for assessments or re-assessments u/s 147. Sub-clause (ii) of Sub-section (3) provides that nothing in Sub-section (1) and (2) shall apply:

(ii) where the assessments, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Sections 250, 254, 260, 262, 263 or 264

(or in an order of any court in a proceedings otherwise than by way of appeal or reference under this Act).

As is clear Sub-section (3) enacts an exception to the period of limitation prescribed u/s 153(1) & (2). It, on its very face, would apply only when the assessment, reassessment or recomputation is open and cannot cover cases where the assessments have already been completed and have not been validly reopened under the provisions of the Act. As has already been mentioned in the present case, the assessments had already been framed by the Income Tax Officer and he could take proceedings for reassessment only by having recourse to Section 147. We have already held that the initiation of proceedings for reassessments u/s 147(a) by the Income Tax Officer was invalid. Section 149 provides a period of limitation within which action u/s 147 can be initiated. The learned Departmental Representative contended that the legislature did not contemplate incomes remaining untaxed. This contention, in our view, is not wholly correct. The legislature was conscious of the difficulty that an assessee would have to face if no time limit is placed for initiation of action for reassessments u/s 147. Therefore, it had to strike a mean between the difficulty that may arise to the tax payer as well as the interests of Revenue and that is why Section 149 has been enacted which provides different periods of limitation for Clauses (a) and (b) as well as different period where the income escaped is beyond a certain monetary limit.

11. The learned Departmental Representative contended that under the aforesaid Sub-clause (ii) of Section 153(3), an assessment or reassessment can be made at any time if the assessment is in consequence of or to give effect to any finding in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act. According to him, the award of the Tribunal was a finding or direction of a Court and, therefore, under this clause the Income Tax Officer could make assessments at any time. As already stated, in our view, Sub-clause (ii) of Section 153(3) can be pressed into service only when the assessment is already pending and it cannot be invoked when the assessments have already been made and have not been validly reopened. The learned Departmental Representative, however, relied upon the ratio of the Hon'ble Karnataka High Court in T.M. Kousali Vs. Sixth Income Tax Officer, in which in almost similar circumstances, the Hon'ble High Court after holding that the assessments could not be reopened u/s 147(a) held that the notice have to be upheld as validly issued u/s 147(b) and Section 153(3)(ii) of the Act. The Hon'ble High Court held that the words "an order of any Court in a proceeding otherwise than by way of appeal or reference under this Act" are wide enough to cover the orders of any Court and the nature of the order made by the Court have no relevance. In the opinion of their Lordships, if there is an order of a Court, whatever be its status, the bar of limitation is automatically lifted. This ruling was considered by the Hon'ble Punjab and Haryana High Court in Mukhtiar Singh Sandhu Vs. Income Tax Officer and Another, and was dissented from on this point. The Hon'ble Punjab and Haryana High Court observed that the

judgment in T.M. Kousali's case suffers from a patent mistake and that if the interpretation of Section 153(3)(ii) as done in T.K. Kousali's case is to be accepted as correct, then Section 150 of the Act becomes redundant. The Hon'ble Punjab and Haryana High Court went further to state that on this aspect of the matter, the Karnataka High Court's judgment is contrary to the judgment of their Lordships of the Supreme Court in Rajinder Nath v. Commissioner of Income Tax (1979) 120 ITR 40. In that case Hon'ble the Supreme Court was concerned with the interpretation of Section 153(3)(ii) itself. In that case in the assessments of a partnership firm, the Income Tax Officer added a certain amount being the unexplained investment in the construction of a building. On appeal the Appellate Assistant Commissioner had held that the partnership was not the owner of the property which actually belonged to the partners in their individual capacity and consequently any excess over the disclosed cost of construction could not be added in the assessments of the firm. The Appellate Assistant Commissioner even observed that the Income Tax Officer was free to take action to assess the excess in the hands of the co-owners. Thereafter, the Income Tax Officer initiated action u/s 147(a) against the individual partners and the matter ultimately reached the Hon'ble Supreme Court which observed as below:

The expressions "finding" and "direction" are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in Section 153(3)(ii) of the Act must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order u/s 143 or Section 144 or Section 147: Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar

Bhagwandas, Lakhimpur Kheri, and N. Kt. Sivalingam Chettiar Vs. Commissioner of Income Tax, Madras,

The Hon''ble Supreme Court held that the decision of the Appellate Assistant Commissioner in the case of the firm was neither a finding nor a direction within the meaning of Section 153(3)(ii).

12. In the case before us what the learned Departmental Representative relied upon is the award passed by the Tribunal enhancing the amount of compensation and consequently of interest payable thereon. The Tribunal was not concerned with the determination of income of the assessee in question and, therefore, there cannot be a finding by the Tribunal that the assessee earned an income from interest assessable to income tax for any of the accounting periods in question. We, therefore, hold that Section 153(3)(ii) was not applicable to the facts of the case and did not enlarge the limitation either for the reopening of the assessments or for their completion.

5. The Tribunal allowed the appeals filed by the assesses:

We have heard Sri Shambhoo Chopra, learned standing counsel for the Revenue and Sri Kishan Chand Jain, learned Counsel appearing for the assesseees, in both the cases.

6. Sri Shambhoo Chopra, learned Standing Counsel, submitted that it was incumbent upon the assesseees to disclose the fact that the matter relating to enhancement of compensation was pending before the Tribunal and as this fact was not disclosed by the assesseees before the Assessing Authority, the Assessing Authority was perfectly justified in invoking the provisions of Section 147(a) of the Act as there has been omission and failure on the part of the assesseees to disclose, fully and truly, all material facts necessary for assessment for that years. Thus, the re-assessment proceeding initiated u/s 147(a) of the Act is wholly within jurisdiction.

7. He further submitted that the Tribunal is a Court. He invited the attention of the Court to the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as "the Adhiniyam"), particularly to Chapter VI which deals with the Tribunal. He referred to Section 64 of the Adhiniyam which empowered the State Government to constitute one or more Tribunal for the purposes of performing functions of the Court with respect to function of the Board. Sub-section (3) of Section 64 of the Adhiniyam provides for as to who shall be its members. It provides that the Tribunal shall consist of a civil judicial officer not below the rank of the District Judge which shall include an Additional District Judge. Sub-section (4) of Section 64 vests the Tribunal with the same power which are vested in a civil court under the Code of Civil Procedure, 1908 and shall follow the same procedure as laid down in that Code. It has also been deemed to be a civil court within the meaning of Section 480 of the Code of Criminal Procedure, 1898 and any proceeding before the Tribunal has been deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. u/s 67 of

the Adhiniyam, the award or any order passed by the Tribunal for payment of money, for delivery of possession or for removal of any structure has been deemed to be a decree and the statement of the grounds of such award or order within the meaning of Clause (2) and Clause (9) respectively of Section 2 of the Code of Civil Procedure, 1908. Under Sub-section (4) of Section 67 of the Adhiniyam it has been provided that an award or order referred to in Sub-section (2) is executable by such Court, as may be prescribed. Sri Chopra, thus, submitted that the Tribunal constituted under the Adhiniyam has all the trappings of a Court and, in fact, for all practical purposes it has been treated and deemed to be a Court. Sri Chopra submitted that in view of the provisions of Clause (2) of Sub-section (3) of Section 153 of the Act, the limitation for completing the assessment stood enlarged as the assessment orders had been passed to give effect to the order passed by the Tribunal. In support of his various pleas, he has relied upon the following decisions:

- (i) Brajnandan Sinha Vs. Jyoti Narain,
- (ii) Shri Virindar Kumar Satyawadi Vs. The State of Punjab,
- (iii) Spool Corporation Co. (India) Vs. Commissioner of Income Tax, and
- (iv) M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,

8. Sri Kishan Chand Jain, learned Counsel appearing for the respondent assessee, on the other hand, submitted that when the assessee had filed their return for the assessment years in question, the Avas Tribunal had not given any award either enhancing the compensation or awarding interest, therefore, the assessee was under no obligation to disclose the factum of pendency of the matter relating to enhancement of compensation before the Avas Tribunal in their return or before the Assessing Authority during the course of the assessment proceeding. He further submitted that there had been no omission or failure on the part of the assessee to disclose fully and truly all material facts and, therefore, the provision of Sub-clause (a) of Section 147 of the Act is not attracted. According to him, the notices issued u/s 148 of the Act were barred by limitation as provided u/s 149 of the Act inasmuch as Clause (a) of Sub-section (1) of Section 149 of the Act would not be applicable in the present case. Re-assessment orders were, therefore, rightly set aside by the Tribunal. He further submitted that the reliance placed upon the provisions of Clause (ii) of Sub-section (3) of Section 153 of the Act is wholly misplaced as it lifts the time limit for completing assessment and re-assessment where it is to be made in consequence of an order of any Court but not for issuing notices u/s 148 of the Act by which the proceedings for reassessment are initiated. According to him, if the notices u/s 148 were barred by limitation, the question of making assessment by invoking the provision of Clause (ii) of Sub-section (3) of Section 153 of the Act cannot be resorted to. In support of his various pleas, he has relied upon the following decisions:

- (i) E.M. Muthappa Chettiar v. Commissioner of Income Tax, Madras [1964] 3 ITR 642
- (ii) Rai Singh Deb Singh Bist and Another Vs. Union of India (UOI) and Others,
- (iii) Shekhawati General Traders Ltd. etc. Vs. Income Tax Officer, Company Circle-1, Jaipur,
- (iv) Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi,
- (v) T.M. Kousali Vs. Sixth Income Tax Officer,
- (vi) Mukhtiar Singh Sandhu Vs. Income Tax Officer and Another,
- (vii) Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd.,
- (viii) Commissioner of Income Tax Vs. Govind Prasad Prabhu Nath,
- (ix) Commissioner of Income Tax Vs. S. Avtar Singh Sandhu,
- (x) P. Mariappa Gounder (Dead) by Lrs. Vs. Commissioner of Income Tax, Madras,
- (xi) Foramer Vs. Commissioner of Income Tax and Another, and
- (xii) Commissioner of Income Tax and Another Vs. Foramer France (through constituted attorneys),

9. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

10. It is not in dispute that each of the assesseees had filed their return of income for the various years. They did not disclose the fact that the matter for enhancement of compensation was pending before the Avas Tribunal. The Avas Tribunal gave an award on 25.5.1981 by which the compensation was enhanced. It also awarded interest on the enhanced compensation. A search and seizure operation has taken place at the residential premises of the assesseees on 24.12.1981 in which the fact regarding receipt of enhanced compensation was found by the Income Tax Authorities. Pursuant to the notices issued u/s 148, the assesseees filed their return of income showing the income as originally assessed and also appending a note in Part III showing income on account of interest on enhanced compensation alongwith a covering note that the interest on enhanced compensation is not taxable u/s 147 of the Act. The interest income has been brought to tax in the re-assessment proceeding. The re-assessment orders have been upheld in appeal filed u/s 246 of the Act. However, it has been set aside by the Tribunal in further appeal on the ground that there was no omission or failure on the part of the assesseees to disclose fully and truly all material facts and further the non-disclosure of the fact that the matter regarding enhancement of compensation was pending before the Avas Tribunal was not a material fact necessary for assessment of that year. The proceedings under Clause (a) of Section 147 of the Act was, therefore, without jurisdiction. The Tribunal also

negated the plea regarding no limitation for making re-assessment under Clause (ii) of Sub-section (3) of Section 153 of the Act.

11. Before advertng to the various issues involved in the present references, for ready reference, we are reproducing relevant provisions of the Act:

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 make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

148. Issue of notice where income has escaped assessment.

(1) Before making the assessment, reassessment or recomputation u/s 147, the Assessing Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

(2) The Income Tax Officer shall, before issuing any notice under this section, record his reasons for doing so.

149. Time limit for notice.

(1) No notice u/s 148 shall be issued, -

(a) in cases falling under Clause (a) of Section 147-

(i) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under Sub-clause (ii);

(ii) for the relevant assessment year, where eight year, but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty-thousand or more for that year;

(b) in cases falling under Clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of Sub-section (1) as to the issue of notice shall be subject to provisions of Section 151.

(3) If the person on whom a notice u/s 148 is to be served is a person treated as the agent of a non-resident u/s 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

150. Provision for cases where assessment is in pursuance of an order on appeal, etc.

(1) Notwithstanding anything contained in Section 149, the notice u/s 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give an effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision.

(2) The provisions of Sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

(It may be mentioned here that the phrase "or by a court in any proceeding under any other law" has been added at the end of Sub-section (1) of Section 150 of the Act by the DirectorTax Laws (Amendment) Act, 1987 (IV of 1988) with effect from 1.4.1989.)

153. Time limit for completion of assessments and reassessments.

(1) No order of assessment shall be made u/s 143 or Section 144 at any time after-

(a) the expiry of-

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1 st day of April, 1967;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is the assessment year commencing on the 1st day of April, 1968;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969; or

(b) the expiry of eight years from the end of the assessment year in which the

income was assessable, in case falling within Clause (c) of Sub-section (1) of Section 271; or

(c) the expiry of one year from the date of the filing of a return or a revised return under Sub-section (4) or Sub-section (5) of Section 139, or

d) the expiry of six months from the end of the month in which an application under Clause (a) of Sub-section (2) of Section 143 is made by the assessee, whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made u/s 147-

(a) where the assessment, reassessment or recomputation is to be made under Clause (a) of that section, after the expiry of four years from the end of the assessment year in which the notice u/s 148 was served;

(b) where the assessment, reassessment or recomputation is to be made under Clause (b) of that section, after-

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice u/s 148, whichever is later.

3) The provisions of Sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of Sub-section (2A) be completed at any time-

(i) where a fresh assessment is made u/s 146;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250, 254, 260, 262, 263, or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147.

12. On a conspectus of the provisions quoted above, the following conditions precedent for initiating reassessment proceedings upto 31.3.1989 emerge -

(i) a reasonable belief has to be formed by the Assessing Officer under Clause (a) or Clause (b) of Section 147;

(ii) the reasons leading to such belief must be recorded by the Assessing Officer as ordained by Section 148(2); and

(iii) a notice for reassessment must be issued within the time limit prescribed by

Section 149 read with Section 150 and be served on the assessee as required by Section 148(1).

13. All these conditions are cumulative and have been introduced by way of safeguards in public interest. These are to be treated as mandatory and none can be waived.

14. In the case of E.M. Muthappa Chettiar (supra) the Madras High Court has held that what constitutes non-disclosure of material facts for the purposes of Section 34(1)(a) of the Indian Income Tax Act, 1922, which is in pari materia with Section 147(a) of the Act, would depend upon the facts of each case. It is, however, clear that the duty of the assessee is only to disclose all the primary relevant facts and does not extend beyond that. It had further held that the rule of full and true disclosure of material and necessary facts should not be so fastidiously construed as would enable the department to say that non-disclosure of a fact which may have a remote bearing on the assessment attracts the section, as the Assessing Officer would have made material use of it to charge the assessee more than what he did.

15. In the case of Rai Singh Deb Singh Bist (supra) the Delhi High Court has held that from the language employed it is clear that Clause (a) of Sub-section (1) of Section 34 contemplates a case of deliberate omission or failure on the part of an assessee in making a full and true disclosure as to all material facts necessary for the assessment while Clause (b) of Section 34(1) covers cases of errors or omission resulting in escapement, etc., notwithstanding a full and true disclosure of all material facts necessary for the assessment. It has further held that it follows from the language employed in Clause (a) that the disclosure is to be with regard to material facts and, therefore, must necessarily be in respect of such facts which exist at all material times between the filing of the return and the order of assessment. A material fact which is not in existence right up to the time of assessment cannot possibly be disclosed. Therefore, a fact which comes into existence subsequent to the making of the assessment cannot, in the opinion of the Court, be a material fact within the purview of Clause (a) of Section 34(1).

16. In the case of Shekhawati General Traders Ltd. (supra) the Apex Court has held that the assessee is bound to disclose under Clause (a) only such material facts which are necessary for its assessment for the assessment year and not those facts which are wholly irrelevant and extraneous for the purpose of assessment. As regards Clause (b) also the information must be such as should lead the Income Tax Officer to believe that income chargeable to tax has escaped assessment. The information, in the present case, relating to the acquisition of the bonus shares subsequent to January 1, 1954, could possibly furnish no reason to the Income Tax Officer to form the belief that income chargeable to tax had escaped assessment for the assessment year in question.

17. In the case of T.M. Kousali (supra) the Karnataka High Court has held that

when the petitioner filed his returns for the relevant assessment years, a claim made by the petitioner before the civil court or this court was pending. But, that claim had neither fructified into a favourable decree nor had the petitioner received any amounts in pursuance of that decree. The pendency of legal proceedings or a claim made under the Acquisition Act cannot be characterised as a material fact that should have been disclosed in the returns for the relevant periods. The Act nowhere provides for an assessee to disclose the legal proceedings he had initiated and pending before a civil court or this court when he filed his returns or the assessments were concluded against him. From this, it follows that this is not one of those cases in which it was open to the ITO to hold that the petitioner had not made a full and true disclosure of all the material facts for the relevant assessment years and that were concluded against him under the Act and, therefore, Section 147(a) of the Act was attracted. In this view, the primary reason recorded by the ITO to reopen the concluded assessments cannot be sustained.

18. In the case of Mukhtiar Singh Sandhu (*supra*) the Punjab and Haryana High Court has held that it is patent that till the amount of interest referred to above had become due to the petitioner as per the judgment of this court dated November 19, 1981, or was actually paid to him on June 15, 1982, he could not possibly be held guilty of not disclosing truly and correctly the material facts for the assessment years referred to above.

19. In the case of S. Avtar Singh Sandhu (*supra*) the Delhi High Court has held that it is not in dispute that when the return was filed on June 29, 1978, the amount of capital gains arising out of the sale of the house had been correctly stated in the return. The assessment was completed on October 7, 1980, and it is no doubt true that a writ petition had been filed in the Supreme Court, but that was only a claim for refund which was made and even if that fact was disclosed it could have made no difference as far as the assessment is concerned because as on that date the amount of unearned increase as claimed by the Government had in fact been paid by the assessee.

20. In the case of Spool Corporation Co. (India) (*supra*) this Court has held that the present reference relates to only the assessment year 1969-70. In connection with this assessment year, exemption from sales tax had been granted by the sales tax authorities on March 25, 1969, i.e., even before the assessment year started. As such, the assessee was well aware that he was exempt from sales tax but yet he suppressed this information from the Income Tax Officer and obtained a deduction towards sales tax liability. This was a clear case of deliberate failure to disclose his correct income and, as such, Section 147(a) was rightly invoked by the Income tax Officer. It was argued that it was a case u/s 147(b) and not Section 147(a). The Court did not agree with this submission. As mentioned above, the assessee deliberately concealed the fact that he had been exempted from sales tax by the order of the sales tax authorities dated March 25, 1969. This was, therefore, case falling within the

scope of Section 147(a).

21. In the case of Phool Chand Bajrang Lal (supra) the Apex Court has held that the judgment in Burlop Dealers" case [1971 79 ITR 609 cannot be understood as laying down any such proposition that even where the Income Tax Officer gets some fresh information which was not available at the time of the original assessment, subsequent to the conclusion of the original assessment proceedings, which enables him to form a reasonable belief that the income of the assessee had escaped assessment because of the omission or failure of the assessee to disclose true and full facts during the assessment proceedings, he cannot reopen the assessment. The observations in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., noticed above, were made in the peculiar fact-situation of that case and cannot be construed to be of universal application irrespective of the facts and circumstances of the particular case. It had further held that from a combined review of the judgments of this court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a Case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information.

22. In the case of Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay, the Apex Court has held that mere production of evidence before the Income Tax Officer was not enough, that 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. The assessee knows all the material and relevant facts-the assessing authority might not. In respect of the failure to disclose, the omission to disclose may be deliberate or inadvertent. That was immaterial. But if there is omission to disclose material facts, then, subject to the other conditions, jurisdiction to reopen is attracted.

23. In the case of Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, the Apex Court has held that to confer jurisdiction under Clause (a) of Section 147 of the Act beyond the period of four years but within a period of eight years from the end of the relevant year u/s 148 of the assessment year,

two conditions were required to be fulfilled : the first is that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to tax had been under-assessed or escaped assessment; the second was that he must have reason to believe that such escapement or underassessment was occasioned by reason, so far as relevant for the present purpose, to disclose fully and truly all material facts necessary for the assessment of that year. Both these conditions are conditions precedent to be satisfied. The Apex Court referred to the observations in *Calcutta Discount Co. Ltd. v. ITO* [1961] 41 ITR 191. The obligation, therefore, of the assessee primarily was to disclose fully and truly all material and relevant facts; that the obligation was only of disclosing the basic facts but not obligation to disclose what inference had to be drawn from such facts.

24. From the aforesaid decisions, it is now well settled that the obligation on the part of an assessee is to disclose fully and truly all material facts necessary for his assessment for that year. He has only to disclose the primary facts and has not to suggest any inference which has to be drawn from it. If he fails or omit to disclose fully and truly facts which are necessary for his assessment of that year, then, Clause (a) of Section 147 gets attracted and the Income Tax Officer after forming reasonable belief can proceed to assess or reassess the escaped income.

25. In the case of *Hindustan Housing and Land Development Trust Ltd.* (supra) the Apex Court has held that there is a clear distinction between cases such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. The Apex Court has affirmed the view taken by the High Court that the amount did not accrue to the assessee as its income during the relevant previous year ending on 31.3.1956 and, therefore, was not taxable for the assessment year 1956-57 as the same was the subject of further appeal.

26. In the case of *Govind Prasad Prabhu Nath* (supra) this Court has held that a mere claim to income without an enforceable right thereto cannot be regarded as accrued income for the purposes of the Act and till the claim of the assessee is decided by the Supreme Court, it could not be said that there was in existence a right in favour of the assessee to receive the amount in question and that, therefore, a debt was created in favour of the assessee and it could not be taxed as income " accrued " or " arisen " to the assessee.

27. The principles laid down in the aforesaid decision and in the case of *Hindustan Housing and Land Development Trust Ltd.* (supra) are not applicable to the facts of the present case as the question of the award of the Avas Tribunal being the subject matter of further appeal, is not borne out from the statement of case drawn by the Tribunal.

28. In the case of *P. Mariyappa Gounder* (supra) the Apex Court has held that the

decree dated April 22, 1958, passed by this court only created an inchoate right in favour of the appellant. It is only when the trial court determined the amount of mesne profits that the right to receive the same accrued in favour of the appellant. In other words, the liability became ascertained only with the order of the trial court on December 22, 1962, and not earlier. Following the mercantile system of accounting, the mesne profits awarded by order dated December 22, 1962, were rightly taxed in the assessment year 1963-64 and it was wholly irrelevant as to when the amount awarded was in fact realised by the assessee.

29. It is, thus, seen, from the decisions of the Delhi High Court in the case of Rai Singh Deb Singh Bist and S. Avtar Singh Sandhu (supra); the Karnataka High Court in the case of T.M. Kousali (supra) and of the Punjab and Haryana High Court in the case of Mukhtiar Singh Sandhu (supra) that what has to be disclosed fully and truly is all material facts necessary for the assessment of that year and if there was no income as a matter of fact in that year and disclosure in that year would not have resulted in assessing such an amount in that assessment year, therefore, it cannot be said that there was any omission or failure on the part of the respondent assessee. Even though the Apex Court in the case of in the case of Dr. Shamlal Narula, T.N.K. Govindaraju Chetty, K.S. Krishna Rao and Bikram Singh (supra) has held that the interest on compensation awarded is of the nature of income and further in the case of Govindaraju Chetty, Rama Bai and K.S. Krishna Rao (supra) has held that the interest on enhanced compensation ordered by the Court accrues from the date when the possession of the land was taken and it accrues from year to year that would not make any difference as even if the fact of the matter for enhancement of compensation which was pending before the Avas Tribunal had been disclosed it would not have resulted in being assessed when the original assessment order was passed in as much as the Avas Tribunal had not given the award till then.

30. We are in respectful agreement with the view taken in the aforesaid cases.

31. We are of the considered view that by not disclosing the fact that the matter regarding enhancement of compensation was pending before the Avas Tribunal, there was neither any omission nor any failure on the part of the respondent assessee to disclose fully and truly all material facts which was necessary for the assessment of that year.

32. So far as the question as to whether the Avas Tribunal is a Court or not, we find that in the case of Brajnandan Sinha (supra) the Apex Court has held as follows:

18. It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

33. The same view was taken subsequently by the Apex Court in the case of

Virindar Kumar Satyawadi (supra) in paragraph 6 of the report, is reproduced below:

6. There has been considerable discussion in the Court in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions. Vide "1931 AC 275 (A)", -"R v. London County Council", 1931 2 KB 215 (B); -"Cooper v. Wilson", 1037 2 KB 309 (C);- "Huddart Parkar and Co. v. Moorehead" (1909) 8 CLR 330 (D); and - "Rola Co. v. The Commonwealth (1944) 69 CLR 185 (E). In this Court, the question was considered in some fullness in - The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi,

It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a Court from a quasi judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter or right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question wherefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the at tributes of a Court.

34. Applying the principles laid down by the Apex Court in the aforesaid cases to the facts of the present case, we find that under Clause (a) of Sub-section (1) of Section 64 of the Adhiniyam, the Avas Tribunal has been constituted for performing the functions of the Court with reference to the acquisition of land for the purposes of Board under the Land Acquisition Act. It consists of Civil Judicial Officer not below the rank of the District Judge which includes an Additional District Judge. It has also been given the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 and has to follow the same procedure as laid down in that Code. It is deemed to be a Civil Court within the meaning of Section 480 of the Code of Criminal Procedure and its proceeding have been deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. Its award has been treated as an award of the Court and a decree within the meaning of Clause (2) and Clause (9) of Section 2 of the Code of Civil Procedure. It has also been empowered to award costs and is executable by such Court, as may be prescribed. From the aforesaid discussion, it is established beyond doubt that the Avas Tribunal is a Court and has all the trappings of a Court.

35. Having come to the conclusion that there was no failure or omission on the part of the respondent assessee to disclose fully and truly all material facts

which were necessary for assessment of the assessment year in question, the question still remains as to whether the provision of Clause (ii) of Sub-section (3) of Section 153 of the Act would be attracted in the present case or not.

36. In the case of Rajinder Nath, (supra) the Apex Court was considering the expressions "finding" and "direction" as contained in Clause (ii) of Sub-section (3) of Section 153 of the Act. It has held as follows:

The expressions " finding " and "direction " are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression " direction " in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions " finding " and " direction " in Section 153(3) (ii) of the Act must be accordingly confined, Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order u/s 143 or Section 144 or Section 147: Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, and N. Kt. Sivalingam Chettiar Vs. Commissioner of Income Tax, Madras, The question formulated by the Tribunal raises the point whether the AAC could convert the provisions of Section 147(1) into those of Section 153(3)(ii) of the Act. In view of Section 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point.

37. However, this decision is not applicable to the facts of the present case as in the present case the question is whether reassessment can be made in the consequence of any order of a Court.

38. The Karnataka High Court in the case of T.M. Kousali (supra) in so far as the applicability of Clause (ii) of Sub-section (3) of Section 153 of the Act is concerned, it has held as follows:

But, in the second part of Clause (ii) of Sub-section (3) of Section 153 of the Act, the words used are " an order of any court in a proceeding otherwise than by way of appeal or reference under this Act". "An order of any court" means an order of any and every court in the country. The hierarchy and status of the court in the country is not decisive. All that this provision provides is that it must be a court and there must be an order of a court. The nature of the court and the nature of the order made by the court have no relevance. If there is an order of a court, whatever be its status, then the bar of limitation is automatically lifted. Acceptance of any other construction, and more so the construction suggested by Sri Ramabhadran on these words, would really result in legislation in the guise of interpretation, which is impermissible.

Section 153(3) is not a charging section but is only a machinery provision. It is well settled that machinery provisions should be construed liberally. Applying this principle, as also the first principle of construction of statutes, namely, that the statute has to be expounded according to the intent of them who made it, it is not possible to accede to the construction suggested by Sri Ramabhadran.

39. In the case of Addl. Commissioner of Income Tax, Gujarat Vs. New Jehangir Vakil Mills Co. Ltd., the Gujarat High Court has held that under Sub-section (1) of Section 153, no order of assessment shall be made u/s 143 or Section 144 at any time after the expiry of different periods provided in that sub-section. Under Sub-section (2), no order of assessment, reassessment or recomputation shall be made u/s 147 after the period - specified in Sub-section (2) of Section 153. Under Sub-section (3) of Section 153, it is provided that the provisions of Sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may be completed at any time... (ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order, ...or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act. It is clear that once the amount of compensation is finally determined in judicial proceedings, effect to that finding will have to be given with reference to the year in which possession was taken and since that is so, by virtue of Section 153(3)(ii), the question of limitation would not arise for consideration.

40. In the case of Foramer France (supra) this Court has held that Section 153 relates to passing of an order of assessment and it does not relate to issuing of notice u/s 147/148. The Civil Appeal filed against the aforesaid decision have been dismissed by the Apex Court in Foramer France (supra) by holding that it did not see any reason to interfere with the decision of the High Court.

41. The Gujarat High Court in the case of New Jehangir Vakil Mills Co. Ltd. (supra) and the Karnataka High Court in the case of T.M. Kousali (supra) has held that if an order has been made by the Civil Court in land acquisition proceeding, it would operate to remove the bar of limitation in re-assessment proceeding in view of Clause (ii) of Sub-section (3) of Section 153 of the Act. However, this

Court in the case of Foramer (supra) has drawn a distinction regarding applicability of Section 153. It has specifically held that it relates to passing of an order of assessment and it does not relate to issuance of notice u/s 147/148 of the Act. We are in respectful agreement with the view taken by this Court in the aforesaid case. The provision of Clause (ii) of Sub-section (3) of Section 153 of the Act would not be attracted. It will be attracted only when the notices u/s 147 of the Act has been issued to initiate proceeding u/s 147 within the period prescribed u/s 149 read with Section 150 of the Act. We are fortified in our view by a decision of the Apex Court in the case of K.M. Sharma Vs. Income Tax Officer, Ward 13(7), New Delhi, wherein the Apex Court had considered the amendment made in Sub-section 91) of Section 150 of the Act by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1.4.1989. The Apex Court has held as under:

Section 149 of the Act prescribes a maximum period of four or seven years depending upon the quantum of tax as mentioned in the said section for initiating reassessment proceedings. Section 150(1) states that the period of limitation prescribed in Section 149 is not applicable, if the reassessment is proposed on the basis of any order passed by any "authority in any proceedings under the Act by way of appeal, reference or revision" or "by a court in any proceeding under any other law". Sub-section (2) of Section 150, however, makes it clear that reassessment permissible under Sub-section (1) of Section 150 would not be available to the Department where the period of limitation for such assessment or reassessment has expired at the time it is proposed to be reopened. In Sub-section (1) of Section 150, by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989, the words "or by a court in any proceeding under any other law" were inserted which are shown in brackets with underline in the section reproduced above.

The main question that has been raised on behalf of learned Counsel appearing for the parties is whether the provisions of Sub-section (1) of Section 150 as amended can be availed of for reopening assessments, which have attained finality and could not be reopened due to bar of limitation, that was attracted at the relevant time to the proposed reassessment proceedings under the provisions of Section 149 of the Act.

42. It has further held as follows:

A fiscal statute more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigants for an indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to Sub-section (1) of Section 150 is not expressed to be retrospective and, therefore,

has to be held as only prospective. The amendment made to Sub-section (1) of Section 150 which intends to lift the embargo of period of limitation u/s 149 to enable the authorities to reopen assessments not only on the basis of orders passed in proceedings under the Income Tax Act but also on the order of a court in any proceedings under any law has to be applied prospectively on or after April 1, 1989, when the said amendment was introduced to Sub-section (1). The provision in Sub-section (1) therefore can have only prospective operation to assessments, which have already become final due to expiry of the period of limitation prescribed for assessment u/s 149 of the Act.

To hold that the amendment to Sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed u/s 149 of the Act as applicable prior to April 1, 1989, would amount to giving Sub-section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended sub-section

43. It has further held as follows:

On a proper construction of the provisions of Section 150(1) and the effect of its operation from April 1, 1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to April 1, 1989, for assessments which have already become final due to the bar of limitation prior to April 1, 1989. The taxing provision imposing a liability is governed by the normal presumption that it is not retrospective and the settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the authorities to affect the finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that Sub-section (1) of Section 150, as amended with effect from April 1, 1989, does not enable the authorities to reopen assessments, which have become final due to bar of limitation prior to April 1, 1989, and this position is applicable equally to re-assessments proposed on the basis of orders passed under the Act or under any other law.

44. However, this is not the end of the matter. The question still remains as to whether there being no omission or failure on the part of the assessee to disclose fully and truly the material facts, the proceeding for reassessment were invalid or not. It is well settled that even though the Income Tax Officer might have chosen to make the assessment order u/s 147(a), there is nothing to prevent the Court from invoking Section 147(b) provided the prerequisite conditions were satisfied and these were found on record. It is to be remembered that Section 147 is not a charging section but only provides a machinery whereby an income which had escaped assessment or had been under-assessed in the relevant assessment years, could be brought to tax.

45. It is well settled that the interest on compensation awarded under the Land Acquisition Act is of the nature of income as held by the Apex Court in the cases of Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab, T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras, K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh, ; Bikram Singh and Others Vs. Land Acquisition Collector and Others,

46. It is also well settled that the interest on enhanced compensation ordered by the Court accrues from the date when possession of the land is taken and it accrues from year to year as held by the Apex Court in the cases of Commissioner of Income Tax, Madras Vs. T.N.K. Govinda Raju Chetty, ; Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, and K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh,

47. We have already held that Clause (a) of Section 147 is not attracted in the present case. By virtue of the award given by the Avas Tribunal on 25.5.1981, which is an information under Clause (b) of Section 147 and as interest on enhanced compensation accrues from year to year as held by the Apex Court in aforementioned cases, the Income Tax Officer had validly initiated the proceeding u/s 147 of the Act and referable to Clause (b) of the aforesaid Section and, therefore, the notices issued on 2.3.1982 for the assessment years 1977-78 to 1980-81 were clearly within the period of limitation as provided under Clause (b) of Sub-section (1) of Section 149 of the Act, i.e., within four years of the end of the assessment year.

48. In view of the foregoing discussions and subject to the aforesaid observations, both the questions referred to us are answered in the affirmative, i.e., in favour of the assesseees and against the Revenue. However, there shall be no order as to costs.