

(2014) 03 GUJ CK 0064
In the Gujarat High Court

Case No : Special Civil Application Nos. 1626 and 1627 of 2014

Lalita Ashwin Jain

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 131(1)(a), 131(1A), 139, 142, 143

Citation : (2014) 363 ITR 343

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hardik V. Vora, Advocate for the Appellant; Mauna M. Bhatt, Advocate for the Respondent

Judgement

Sonia Gokani, J.—Challenging the notice of reopening for the assessment year 2006-07 issued u/s 148 of the income tax Act, 1961 ("the Act" for short) dated March 28, 2013, the present petition is preferred under article 226 of the Constitution of India, in the following factual background. The assessee is in the share trading business. For the year under consideration, the return of income was filed on December 6, 2006. Notice u/s 143(2) of the Act was issued by the respondent on July 30, 2007, which was replied to and the Assessing Officer, after making certain additions, passed original assessment order on July 1, 2008. The assessee's income was assessed at Rs. 1,51,892.

2. The impugned notice came to be issued after four years from the end of the relevant assessment year under consideration for reassessing the income of the assessee. The Assessing Officer, on having reason to believe that the income of the petitioner has escaped the assessment on account of non-disclosure of all material facts truly and factually, has issued such a notice.

3. The reasons recorded for reopening of assessment u/s 147 of the Act are as under:

(a) The following sources of investment have been found to be unexplained as the companies who funded the investment have been found to be bogus. The investments were also not found to be recorded in the books of account of the assessee as they were squared off during the financial year itself. The explanation offered by the assessee is also not been found to be satisfactory in view of the following fact:

In the statement recorded on oath u/s 131(1A) of the Act on February 8, 2013, Shri Ashwin C. Jain admitted that all the transactions had been undertaken by him in the name of his family members. Upon being enquired, about New Generation Finvest P. Ltd., SRS Vijay Sales P. Ltd. and M/s. Ami Securities, he contended that he had been only in contact with one Shri Rajesh Jain of Delhi and one Shri Amrutlal of Mumbai who in turn introduced him to the said companies for the purpose of providing him with marginal funding for IPO applications. When asked about the whereabouts of Shri Rajesh Jain and Shri Amrutlal and also about contact person for the said purposes, the assessee feigned ignorance. When asked to furnish complete details of how the loan amounts, refunds and profit were extended by the said parties to him, the assessee failed to comply.

In view of the above, I have, therefore, reason to believe that the assessee's income has escaped assessment within the meaning of section 147 of the income tax Act, 1961. Therefore, this is a fit case for reopening of assessment.

4. In response to such notice, the objections have been raised by the petitioner herein, vide communication dated June 6, 2013, inter alia, contending that any notice issued beyond the period of four years is invalid unless the income has escaped assessment on account of non-disclosure of all material facts truly and fully by the petitioner. It is also contended that the very issue has been in detail scrutinized by the Assessing Officer, and, therefore, the notice is nothing but a change of opinion, which is impermissible under the law. It is further contended that the reasons recorded also did not reflect that there is any reason to believe that the income has escaped the notice in as much as the only source reflected in the reasons is the investigation.

5. The Assessing Officer, on consideration of the objections, passed an order rejecting the objections vide its order dated September 20, 2013. He observed that the sources of investment of Rs. 33.40 lakhs (rounded off) pertaining to purchase of shares have been found to be unexplained inasmuch as the companies with which the investments have been made are bogus, and, therefore, in Form HNS 10 clearly mentions that the income has escaped assessment warranting initiation of proceedings u/s 148 of the Act. All judicial pronouncements relied upon by the petitioner were considered and yet the conclusion remained the same, and, therefore, the present petition seeking the following reliefs:

5.1 The petitioner accordingly prays that this hon''ble court may kindly be

pleased to issue:

(a) a writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the impugned notice dated March 28, 2013, issued u/s 148 of the Act for the assessment year 2006-07;

(b) pending the admission, hearing and final disposal of this petition, restrain the respondent from passing the order of reassessment;

(c) pass any other order(s) as this hon"ble court may deem fit and more appropriate in order to grant interim relief to the petitioner;

(d) any other and further relief deemed just and proper be granted in the interest of justice;

(e) to provide for the cost of this petition.

6. On issuance of notice, the respondent filed affidavit-in-reply, inter alia, contending that the petition is premature as there is alternative statutory remedy available under the provisions of the Act and in the event of the petitioner not succeeding in convincing the Assessing Officer in dropping the proceedings u/s 147 of the Act, the appeal proceedings are available. It is also contended that for the assessment year under question, the return was processed u/s 143(1) of the Act and on scrutiny, the order was passed in the original assessment assessing the income of the petitioner at Rs. 1.51 lakhs (rounded off). However, subsequently it was noticed that the sources of income of Rs. 33.40 lakhs pertaining to purchase of shares remained unexplained, as the companies which funded the said investments were found bogus. Such investments were also not recorded in the books of account of the petitioner and they were squared off during the financial year itself, details were called for. During the course of recordance of statement u/s 131(1)(a) of the Act on February 8, 2013, the husband of the assessee, Shri Ashwin Jain, admitted that all transactions were undertaken in the name of the family members and the companies which funded the investment were, viz., New Generation Finvest P. Ltd.; SRS Vijay Sales P. Ltd. and M/s. Ami Securities. For the purpose of providing marginal funding for IPO applications, he was introduced to these companies through Shri Rajesh Jain of Delhi and Shri Amrutlal of Mumbai. However, whereabouts of these persons were not given and the details with regard to the loan amount, refund and profits, etc, were not furnished. Resultantly, it is the contention of respondent-Revenue that the source of investment pertaining to the purchase of shares has escaped the assessment, and, therefore, the Assessing Officer when formed his belief on the strength of such material, no inference would be desirable at this stage. It is further contended that the queries were raised and insufficiently replied to, later on when it was revealed through the evidence that the explanation made was incorrect the reopening is permissible as there was no true and full disclosure of the material facts necessary for the purpose of assessing the income of the petitioner.

6.1 Affidavit-in-rejoinder has been filed by the petitioner urging strongly that the petitioner has challenged the jurisdiction of the Assessing Officer in issuing the notice u/s 148 of the Act and such issue is long ago settled by the Supreme Court in case of Calcutta Discount Company Ltd. (supra). It is also further urged that the belief of the Assessing Officer that the investments were not recorded in the books of account and were squared off during the financial year itself is totally on the wrong footing, as such investment continued to remain in the books of account, they would not be reflected in the balance-sheet. Moreover, it is urged that the details of investments were called for during the scrutiny assessment as investment in shares were for more than rupees one lakh, which was a part of AIR information. The assessee had produced ledger accounts and vouchers in response to the AIR information which shows the investment in the profit made therefrom. Therefore, to say that the investment was not recorded in the books of account is contrary to the material on record.

7. Learned counsel, Shri H.V. Vora, appearing for the petitioner, has strenuously and fervently submitted in support of the averments set out in the petitions. He urged that in a matter of scrutiny assessment originally made in the case of the petitioner, when the Assessing Officer has chosen not to make any additions and when the very issue was duly considered in a proceeding u/s 147 beyond the period of four years from the end of the relevant assessment year, in the absence of anything to indicate that disclosure was not full and true on all material facts necessary for the purpose of assessment, no jurisdiction is available to the Assessing Officer. He urged that despite alternative remedy available to the petitioner, he cannot be allowed to undergo the hazards of reopening when the very basis of such proceeding is absent. He urged that the Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, had quashed the notice on the ground of lack of jurisdiction. Identical are the facts in the instant case where the petitioner has disclosed fully and truly all material facts. He urged the court that in the reasons recorded, the Assessing Officer has solely relied on the material produced by the investigating team and there is no independent application of mind on his part. The Assessing Officer himself has no reason to believe that the income has escaped assessment. He also urged that the petitioner had not dealt with other two companies mentioned in the statement given by the husband of the petitioner, who is a separate entity in the eyes of law. The books of account of the petitioner, according to the learned counsel, reflected the entire transactions, and, therefore, the order rejecting the objection wrongly states that these transactions were not reflected in the books of account and were squared off. He further urged that there has to be a rationale nexus of reasons recorded with the escapement of income. The objections raised by the petitioners were disposed of mechanically and, therefore, the court's indulgence is required.

7.1 It is also further contended that no funding for investment was received from either SRS Vijay Sales or Messrs Ami Securities, and, therefore, the information that these two companies have funded the investment is totally false, misleading

and contrary to the record. According to the petitioner, during the inquiry, at the time of original assessment, a detailed reply has been furnished by the petitioner where all the ledgers reflected the investment, its sources and profit arrived therefrom. If no reference of the inquiry is made in the assessment order, that would not mean that no opinion is formed as held by this court in the case of Gujarat Power Corporation Ltd. Vs. Assistant Commissioner of Income Tax, .

7.2 It is further urged that on completion of four years from the end of relevant assessment year, section 149(1)(b) provides that the notice can be issued only if the income chargeable to tax, which has escaped the assessment or likely to amount to rupees one lakh or more for that year under consideration. In the absence of anything in reason recorded to suggest in the reasons recorded that income chargeable to tax, which has escaped assessment is rupees one lakh or more, notice itself deserves to be quashed, as held by this court in case of Bakulbhai Ramanlal Patel Vs. ITO . It is further urged that section 151 desires the satisfaction of the Commissioner to be recorded while permitting the reassessment proceedings on the reasons recorded by the Assessing Officer that it is a fit case for issuance of a notice u/s 148, if such notice is issued after the expiry of four years from the end of the relevant assessment year. However, merely writing "Yes" to the proposal would mean a mechanical nod which would be contrary to the settled principle as rendered in the case of The Central India Electric Supply Co. Ltd. Vs. Income Tax Officer and Another, .

7.3 Following are the authorities sought to be relied upon by the learned counsel for the petitioner in support of his contentions, these are--

- (a) Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ;
- (b) Mahesh Kumar Gupta, Smt. Rukhmani Devi and Yogesh Kumar Gupta Vs. Commissioner of Income Tax and Another, ; [2013] 33 Taxmann.com 409 (All.);
- (c) Signature hotels (P) Ltd. Vs. Income Tax Officer and Another, ;
- (d) Chhugamal Rajpal Vs. S.P. Chaliha and Others, ; and
- (e) Bakulbhai Ramanlal Patel Vs. ITO .

8. Learned counsel, Shri Manish Bhatt, appearing for the Revenue, forcefully submitted that in the wake of the alternative remedy available with the petitioner, no interference is desirable. He urged that though the original assessment was completed on scrutiny, it is very clear from the reasons recorded itself that the petitioner at no point of time had disclosed fully and truly all material facts. He urged that mere disclosure is not sufficient. It has to be true and full disclosure and, therefore, when subsequently, the Assessing Officer had found that the companies which had funded the petitioner for making investment in the shares were bogus, that would not mean the disclosure is full and true. Learned counsel sought to rely upon the following decisions:

- (a) M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and

another, ;

(b) P. Munirathnam Chetty and P. Satyanarayana Chetty Vs. Income Tax Officer, C-Ward and Another, ; and

(c) K.C.P. Ltd. Vs. Income Tax Officer, Central Circle, Vijayawada-3, .

9. Upon thus hearing both the sides and on examination of the material on record, at the outset, the law on the subject deserves consideration.

10. Section 148 permits the Assessing Officer to reopen the assessment if he has a reason to believe that the income chargeable to tax has escaped the assessment. It authorises him to make reassessment even beyond the period of four years, if the income chargeable to tax has escaped the assessment for such assessment year on account of the failure on the part of the assessee to make a return u/s 139 or in respect to a notice under sub-section (1) of section 142 or section 148 or he has failed to disclose fully and truly all material facts necessary for such assessment.

10.1 In various judicial pronouncements, it has been established that when the assessment is framed u/s 143(3) of the Act, the reopening beyond the period of four years is permissible only if the income chargeable to tax has escaped the assessment on account of failure on the part of the assessee to make a return u/s 139 or in response to the notice under sub-section (1) of section 142 or section 148 or if a person has failed to disclose fully and truly all material facts necessary for the assessment. The requirement of the proviso to section 147 deserves to be satisfied, and, therefore, in the absence of any satisfaction having been recorded by the Assessing Officer that the income has escaped the assessment by reason of failure on the part of the petitioner-assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration, the assumption of jurisdiction u/s 147 of the Act would be invalid.

10.2 In the case of Phool Chand Bajrang Lal v. ITO (supra), the apex court was dealing with a case of reassessment. In the original assessment, the assessee-firm claimed that it had borrowed certain amount from a Calcutta based company. The income tax Officer directed the assessee to file a copy of account of the said Calcutta company to support the loan transaction and in reply thereto, the assessee produced a confirmatory letter from the said company confirming the payment of loan to the assessee. For nearly five years, i.e., the assessment years 1963-64 to 1968-69, such deduction of interest, as claimed by the assessee having been paid to the Calcutta company, continued to be allowed by the income tax Officer. Later on, the income tax Officer entertained some doubts about the genuineness of the loan transaction, and, therefore, a communication was sent to the income tax Officer stationed at Calcutta. It was realized that the managing director of the said Calcutta company had confessed that he was only a name-lender and had not advanced any loan to any party during the three assessment years. Thus, these transactions were found to be

bogus on the basis of the subsequent information received. In the light of these facts, the apex court held and observed thus (pages 473, 476):

In the present case, as already noticed, the income tax Officer Azamgarh, subsequent to completion of the original assessment proceedings, on making an enquiry from the jurisdictional income tax Officer at Calcutta, learnt that the Calcutta company from whom the assessee claimed to have borrowed the loan of Rs. 50,000 in cash, had not really lent any money but only its name, to cover up a bogus transaction and after recording this satisfaction as required by the provisions of section 147 of the Act proposed to reopen the assessment proceedings. The present is, thus, not a case where the income tax Officer sought to draw any fresh inference, which could have been raised at the time of original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company and which he failed to draw at that time. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made by the assessee at the time of original assessment is different from drawing a fresh inference from the some facts and material which was available which the income tax Officer at the time of original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the "true" and "full" facts in the case and the income tax Officer would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness of the loan transaction but in our opinion his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act u/s 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the income tax Officer acquired reasons to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific ...

Again, in *A.L.A. Firm Vs. Commissioner of Income Tax, Madras*, , a three-judge Bench of this court, to which one of us (S.C. Agrawal J.) was a party; after an elaborate discussion of the subject opined that the jurisdiction of the income tax Officer to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe, that income chargeable to tax and had escaped assessment. It was held that even if the information be such that it could have been obtained by the income tax Officer during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained it would not affect the jurisdiction of the income tax Officer to initiate reassessment proceedings, if the twin conditions prescribed u/s

147 of the Act are satisfied.

From a combined review of the judgments of this court, it follows that an income tax Officer acquires jurisdiction to reopen 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, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts 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. Since the belief is that of the income tax Officer, the sufficiency of reasons for forming the belief, is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the income tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the income tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the income tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the income tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment. The High Courts which have interpreted The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., as laying down law to the contrary fell into an error and did not appreciate the import of that judgment correctly.

We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 of the Act and is against the settled law laid down by this court. We have to look to the purpose and intent of the provisions. One of the purposes of section 147, appears to us to be, to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied

and you can do nothing". It would be travesty of justice to allow the assessee that latitude.

In our opinion, therefore, in the facts of the present case the income tax Officer, Azamgarh rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific relevant and reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and therefore income chargeable to tax had escaped assessment. He, therefore, correctly invoked the provisions of sections 147(a) and 148 of the Act. The High Court was, thus, perfectly justified in dismissing the writ petition. There is no merit in this appeal which fails and is dismissed but with no order as to costs.

10.3 In the case of P. Munirathnam Chetty and P. Satyanarayana Chetty Vs. Income Tax Officer, C-Ward and Another, , the income tax Officer in a proceeding u/s 147 of the Act accepted the book results of the assessee-firm. However, later on, from the order of the sales tax authorities, the Assessing Officer noticed that the assessee had failed to disclose fully and truly all material facts as the turnover of the assessee was at much higher figure and penalty also was levied by the sales tax authorities for such suppression of turnover and, therefore, the proceedings u/s 147 of the income tax Act were initiated. The Commissioner also granted sanction by saying "yes". The court held that this was not a case where the income tax Officer thought that it was a case for investigation nor was there any documentary evidence to support his report. Merely because the Commissioner said "yes" against the question as to whether such was a fit case for issuance of the notice u/s 148, he was alleged of having acted mechanically. The court, therefore, observed and held that in order to obviate such impression and to infuse more confidence in the assessee, the Commissioner ought to have at least briefly stated the reasons as to why the sanction was accorded for proceedings u/s 147 of the Act.

10.4 In the case of K.C.P. Ltd. v. ITO (supra), the assessee had sold certain machinery and had shown three-fourths of sale price as profits. The assessment was accordingly finalized. Depreciation also was allowed at the time of original proceedings. However, later on, it was realized that the same was in excess due to the assessee's failure to disclose availment of initial depreciation. Therefore, the reassessment proceedings were initiated for withdrawing excess depreciation. The court held that the assessee's contention that it was under no obligation to disclose the factum of availment of initial depreciation since the form of return prescribed at the relevant time did not contain any column requiring the assessee to furnish such information could not be accepted. Every assessee is expected to know the law that it was not entitled to claim the normal depreciation above the prescribed ceiling. If that was done and if that had crossed the ceiling by availing of the depreciation, he could be said to have omitted or failed to disclose fully and truly all material facts necessary for the

purpose of assessment.

10.5 With regard to Commissioner's having exercised the function u/s 148(2) of the Act, the same, however, was held not to be mechanical. The court, therefore, held that, "The Commissioner's function u/s 148(2) is not a mechanical one. He has to peruse the reasons and form an opinion that the assessee has failed to disclose fully and truly all material facts necessary for assessment of that year, and that the same has led to the income chargeable to tax escaping assessment. Obviously, he cannot form this opinion or satisfaction unless the basic facts constituting such non-disclosure are stated in the reasons recorded by the income tax Officer. The income tax Officer must broadly indicate the fact or facts, which constitute non-disclosure leading to assessable income escaping assessment".

11. At this juncture, some of the judgments sought to be relied upon by the petitioner deserve consideration.

11.1 In the case of *Bakulbhai Ramanlal Patel v. ITO (supra)*, the reasons recorded in the proceedings of reassessment were found to be vague or non-existent and in the light of these facts, the court held that for the purpose of invoking the provisions of section 147 of the Act, formation of requisite belief precedes the initiation of the proceedings. The Assessing Officer is required to record reasons for the formation of belief that income chargeable to tax has escaped assessment and in the absence of any such belief appearing on the record, it could be stated that the Assessing Officer reopened the assessment for the purpose of making a roving and fishing inquiry to verify as to whether any income has in fact escaped the assessment, which is impermissible. Thus, in the absence of the basic requirement of section 147 of the Act, the assumption of jurisdiction by the Assessing Officer was held to be invalid. The court in this case also has held and observed that in reassessment proceedings the income escaped must exceed rupees one lakh as per the limitation set out under the provisions of section 149(1)(b). When the reasons do not reflect that the income having escaped assessment was more than rupees one lakh or likely to be more than rupees one lakh, the assumption of jurisdiction u/s 147 itself would be invalid, as such averment came in the affidavit-in-reply and there was no other material on record to indicate the extent of income which escaped assessment.

11.2 In the case of *Mahesh Kumar Gupta v. CIT (supra)*, the Allahabad High Court was considering the case of reassessment after the expiry of four years from the end of the relevant assessment year on the ground that the assessee sold his property within three years of conversion, which would result into accrual of short-term gain. In the absence of anything in the reasons recorded to suggest that income chargeable to tax which has escaped assessment was rupees one lakh or more, the reassessment notice issued after four years from the end of the relevant assessment year was held to be invalid.

11.3 The apex court in the case of *Chhugamal Rajpal v. S.P. Chaliha (supra)*

noticed that the income tax Officer initiated reassessment proceedings seeking to include certain cash credits appearing in the books of account of the assessee's income on suspicion that the creditors were mere name-lenders though the assessee had produced its books of account and also the statement giving full particulars of creditors at the time of original assessment. The court held that when the income tax Officer did not even come to a prima facie conclusion that the transactions were not the genuine transactions and the conclusion arrived at were on a vague feeling that they might be bogus transactions, would not amount to fulfilling the requirements of the provisions of section 151(2). In the case before the apex court, the Commissioner also mechanically accorded permission, and, therefore, the court held that the important safeguards provided in section 147 and section 151 were lightly treated by the income tax Officer and the Commissioner, and, therefore, the notice was held invalid.

11.4 The apex court in the case of ITO v. Lakhmani Mewal Das (supra) held that in the case of reassessment proceedings, the reasons recorded for formation of belief, as contemplated u/s 147(a) must have a rational connection with or a relevant bearing on the formation of belief and the rational connection postulates that there must be direct nexus or live link between material coming to the income tax Officer's notice and formation of his belief that there has been escapement of the assessee's income from assessment in a particular year because of his failure to disclose fully and truly all material facts.

11.5 In a case before the apex court, the income tax Officer had completed the original assessment by allowing the deduction of interest paid to certain creditors. However, when one of the creditors had confessed that he was doing only name-lending and that other creditors were only name-lenders, the reopening proceedings were initiated. There was absence of any material to indicate that the confession made by the creditor related to the loan to the assessee and not to some one else. In the absence of such confession related to the period which was a subject matter of assessment, the court found the absence of live link or close nexus with the material and the belief of the income tax Officer, and, therefore, the apex court quashed the order of the High Court by holding that such material could not have led to formation of belief that the income of the assessee had escaped assessment on account of the assessee's failure or omission to disclose fully and truly all material facts.

11.6 The Delhi High Court in the case of Signature Hotels (P.) Ltd. v. ITO (supra) was concerned with the reassessment proceedings where information was given by the Director of income tax (Investigation) that the amount received by the assessee from other company was nothing but accommodation entry and the assessee was the beneficiary. In the absence of any application of mind on the part of the Assessing Officer for his having formed a belief that the income chargeable to tax has escaped assessment which is a mandatory requirement the court held that the jurisdiction assumed by the Assessing Officer for the purpose of reassessment proceeding was invalid. The court also held that (page 54): "The

"reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and do not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer".

11.7 The Delhi High Court in the case of Central India Electric Supply Co. Ltd. v. ITO (supra) was dealing with a case of reopening. Such reassessment proceedings were initiated alleging that there was non-disclosure of primary facts on the part of the assessee-company which was engaged in generation and supply of electricity from its unit. Its unit were acquired by the State Government in 1964 and compensation thereof was paid in the same year. The assessee had made the claim for higher compensation and the matter was finally settled by the Supreme Court nearly after 10 years and the enhanced compensation was availed of to the assessee in the assessment year 1979-80.

11.8 The Assessing Officer was of the belief that since the income had accrued to the assessee under the head of long-term capital gains given on transfer of assets in respect of its two units, such income was to be taxed in the very assessment year, i.e., 1964 when the transfer took place. Considering the fact that the Supreme Court pronounced its judgment which settled the dispute of enhanced compensation, the Delhi High Court held that there was no lack of disclosure by the assessee with respect to the enhanced compensation and, therefore, reopening of assessment for the relevant assessment year was held without jurisdiction.

11.9 In this very judgment, on the issue of sanction for issuance of the notice as contemplated u/s 151, the court held and observed that mere rubber stamping of underlying material would suggest that there was no application of mind and such endorsement was taken in a mechanical manner and even if the authority agreed upon the reasonings set out by the income tax Officer, what is expected is that appropriate endorsement is made in this regard setting out brief reasons.

12. In the light of the discussion held hereinabove, the twin conditions required for the satisfaction of the income tax Officer, in the event of reopening of assessment beyond the period of four years is that (i) there must be a reason to believe that income chargeable to tax had escaped assessment; and (ii) he also must have reason to believe that such escapement of income is on account of omission or failure on the part of the assessee to disclose fully and truly all material facts for assessment of the income of the assessee for the year under consideration.

13. Once the Assessing Officer has a reason to believe that such income has escaped assessment, the same as per the statutory requirement u/s 149(1)(b) has to be more than rupees one lakh or should likely to be more than rupees one lakh. And on having formed such belief, sanction of the Commissioner for reopening needs to be obtained u/s 151(2) of the Act, who also is required to

apply his mind to such proposal before according sanction, rather than acting mechanically. For examining the application of these statutory provisions, in the present case, it is necessary to revert to the facts. Admittedly, the assessee had made disclosure in respect of the investment made in three companies and the assessment was completed u/s 143(3) on July 1, 2008, after scrutiny. In the reasons recorded for reopening assessment u/s 147, the Assessing Officer has noted the fact that the return of the assessee for the assessment year 2006-07 was filed on December 6, 2006, where he declared his come at Rs. 1,46,710, such return was processed u/s 143(1) and her case was selected for scrutiny through CASS and, accordingly, the assessment order was passed on July 1, 2008, assessing her income at Rs. 1,51,890. From the sources of investment, the Assessing Officer is of the belief that the companies who funded the investment were found to be bogus. The investments were not found to be recorded in the books of account of the assessee as they were squared off during the financial year itself and the explanation offered by the assessee was not found to be satisfactory, inasmuch as, the statement recorded u/s 131(1)(a) of Shri Ashwin C. Jain, husband of the petitioner on February 8, 2013, wherein he admitted that such name sake transactions had been undertaken by him were in the name of his family members. With regard to the three companies, viz., New Generation Finvest P. Ltd.; SRS Vijay Sales P. Ltd. and M/s. Ami Securities, he stated, inter alia, that he was in contact with one Shri Rajesh Jain of Delhi and one Shri Amrutlal of Mumbai who introduced him to the said companies for the purpose of providing him with margin funding for I.P.O. applications. However, he had no clue with regard to the whereabouts of both these persons. He also failed to furnish details of loan amounts, refunds and profit extended by the said parties to him. The income tax Officer on the basis of these details formed his belief that the assessee's income had escaped assessment within the meaning of section 147 of the Act. This was thus a case where there were no full and true disclosures by the assessee.

13.1 It is also to be noted that for approval to be obtained of Additional Commissioner of income tax, Form I.T.N.S. 10 had also been furnished for such approval being a must u/s 151 wherein the quantum of income which had escaped assessment is mentioned. In column No. 6, the amount mentioned is Rs. 33,40,980 and in column No. 11, "the reason for the belief that income has escaped assessment" annexure was enclosed therewith. The Commissioner of income tax, of course while according sanction has written "yes" on the reasons recorded by the Assessing Officer that it was a fit case for issuance of notice u/s 148 of the Act.

13.2 Therefore, at this juncture, all the three grounds raised by the petitioner, viz., (i) the absence of any failure on the part of the assessee to disclose fully and truly any material facts necessary for the purpose of assessment for the year under consideration and the income chargeable to tax having escaped assessment for that year on account thereof; (ii) the absence of anything in the reasons recorded to suggest that the income chargeable to tax which has

escaped assessment was rupees one lakh or more; and (iii) the absence of any application of mind on the part of the Commissioner, while exercising his power to grant sanction, are required to be dealt with in the light of the discussion made hereinabove.

14. Taking firstly, the last two grounds raised by the petitioner, it is true that in the reasons recorded, the Assessing Officer has not specifically recorded that income chargeable to tax which had escaped assessment for the year under consideration was rupees one lakh or more. The impugned reassessment notice issued after four years of the close of the relevant assessment year, since is attacked on the ground of invalidity, it needs to be noted here that in the decision of this court in case of *Bakulbhai Ramanlal Patel v. ITO (supra)*, the reasons did not reflect that the income having escaped assessment was more than rupees one lakh or likely to be more than rupees one lakh, as is required to be done under the provisions of section 149(1)(b). The court, therefore, held that while reopening the assessment beyond the period of four years from the end of relevant assessment year, such recordance is inevitable. Since there is a statutory bar against reopening the assessment, in case where the amount of income escaping the assessment does not amount to rupees one lakh or more. The Assessing Officer is required to record a finding to that effect and when no such finding had been recorded, except for a bare averment made in the affidavit-in-reply stating therein that income which had escaped assessment was more than rupees one lakh, and, thus, in the absence of any material on record to indicate that extent of income which had escaped assessment, the court held that the assumption of jurisdiction on the part of the Assessing Officer u/s 147 was invalid.

14.1 We notice that as in the case of *Bakulbhai Ramanlal Patel v. ITO (supra)*, in the instant case also, the reasons do not reflect that the income having escaped assessment is more than rupees one lakh or likely to be more than rupees one lakh, as required u/s 149(1)(b) of the Act. However, the vital difference favouring the Revenue in the instant case is the fact that in Form No. ITNS 10, while placing the reasons recorded for approval of the Commissioner prior to the issuance of the notice u/s 148, the Assessing Officer had recorded in column No. 6 that the income which has escaped the assessment was Rs. 33,40,980, which obviously is more than the statutory requirement of rupees one lakh, and therefore, it cannot be said that the statutory bar imposed against reopening of assessment in case would operate in this case. As discussed above, where the amount of income escaping assessment exceed rupees one lakh, the Assessing Officer is required to record a finding to that effect. We notice that if not in the reasons recorded, in the present case, such findings forms part of ITNS 10 Form where there is a specific quantification of the amount of tax that had escaped assessment, and, therefore, we hold that the Assessing Officer before initiating the reassessment proceedings had specified by way of such quantification thereby clearly reflecting that the income which had escaped assessment was more than rupees one lakh. Therefore, challenge to the validity of the notice u/s

147 on this count must fail. What is vital is the recording of a finding to the effect that the income chargeable to tax which had escaped assessment was rupees one lakh or more. As discussed hereinabove, there is already a material on record which was in existence prior to initiation of proceedings and the amount of tax which had escaped assessment has not been reflected by way of affidavit-in-reply alone, as was the case in the matter between Bakulbhai Ramanlal Patel v. ITO (supra) and, therefore, heavy reliance on the said authority by the petitioner does not as such help the cause of the petitioner. Further, as recorded earlier, there was ample material on record to suggest that income chargeable to tax had escaped assessment for the reason of the assessee failing to disclose truly and fully all material facts. Additional condition outlined in the proviso to section 147 of the Act thus stood satisfied. Merely because in the reasons recorded, the Assessing Officer did not repeat such phrase would not be fatal to the notice of reopening. What is of importance is the substance and not the form. As long as it can be demonstrated that such condition was satisfied and there was material before the Assessing Officer on the basis of which he came to such a conclusion, in what manner in the reasons recorded, he conveyed the same is not material. In the case of Dishman Pharmaceuticals and Chemicals Limited Vs. Deputy Commissioner of Income Tax (OSD), , it was observed that (page 240):

From the above judicial pronouncements, the following principles can be culled out:

(i) To confer jurisdiction to the Assessing Officer to reopen the assessment u/s 147 of the income tax Act, beyond four years from the end of assessment year, the following two conditions must be satisfied (a) that the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment; and (b) that the same was occasioned, on account of either failure on the part of the assessee to make a return of his income for that assessment year, or to disclose fully and truly all material facts necessary for assessment of that year; (ii) Both the above conditions are condition precedent and must be satisfied simultaneously before the income tax Officer can assume jurisdiction to reopen assessment beyond four years of the end of assessment year; (iii) Such reasons must be recorded and if the reasons recorded by the Assessing Officer do not disclose satisfaction of these two conditions, reopening notice must fail; (iv) There is no set format in which such reasons must be recorded. It is not the language but the contents of such recorded reasons which assumes importance. In other words, a mere statement that the Assessing Officer had reason to believe that certain income has escaped assessment and such escapement of income was on account of non-filing of the return by the assessee or failure on his part to disclose fully and truly all material facts necessary for assessment would not be conclusive. Nor, absence of any such statement would be fatal, if on the basis of reasons recorded, it can be culled out that there were sufficient grounds for the Assessing Officer to hold such beliefs; (v) Such reasons must emerge from the reasons recorded by the Assessing Officer and cannot be supplied through an affidavit filed before the court.

15. In the present case, the reasons recorded clearly suggest that income escaped assessment due to the assessee not disclosing true and full facts.

16. With regard to the satisfaction recorded by the Commissioner which is alleged to have not been recorded as required u/s 151 of the Act, it is contended by the petitioner that merely writing "yes" and signing thereon suggest that the decision was mechanical.

16.1 This, of course, is a very valid and additional safeguard to check against the exercise of powers of reassessment in arbitrary fashion. Section 151 of the Act requires an Assessing Officer to seek approval of the Joint Commissioner, in a case where assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year and "the notice is to be issued after the expiry of four years from the end of the relevant assessment year". Thus, while issuing notice of reopening on expiry of four years period from the end of the relevant assessment year, in a case assessment was previously framed u/s 143(3) or section 147, seeking approval of the Joint Commissioner by the Assessing Officer is a must. Requirement under the law is that the Joint Commissioner needs to be satisfied on the reasons recorded by the Assessing Officer.

16.2 Of course, in the judicial pronouncements discussed hereinabove, the courts have time and again emphasized that the income tax Officer when proposes to reopen the assessment u/s 147(a) and requests the Commissioner to accord necessary sanction for reopening the assessment, the Commissioner so as to obviate any impression that he had not applied the mind and also to infuse more confidence in the assessee should state brief reasons while sanctioning such proceeding u/s 147 of the Act.

16.3 The reference needs to be made at this stage of Circular No. 1 of 2009, dated March 27, 2009 ([2009] 310 ITR (St.) 42), of the Central Board of Direct Taxes sought to be relied upon by the Revenue which is a self-explanatory note to the provisions of the Finance Act, 2008, where Note No. 29 concerns amendment in respect of reassessment proceedings. It is meant to clarify the correct legislative intention in respect of the amendment relating to section 151 which has been made applicable with effect from October 1, 1998. It has been stated that the legislative intent is very clear that the Joint Commissioner is only required to be satisfied on the reasons recorded by the Assessing Officer and no notice is required to be issued by him. Possibly this was necessitated as some pronouncements on this issue insisted upon the issuance of notice at the end of the Joint Commissioner. Here, of course, that is neither the case nor insistence of the petitioner.

16.4 However, so as to aver such allegations of non-application of mind all that is desirable is that the Joint Commissioner should briefly state his reasons. However, only because he has nodded in favour of the Assessing Officer by writing "yes" to the reasons recorded and accorded permission for reopening of

the assessment, the notice of reopening on that count alone cannot fail holding that the assumption of jurisdiction u/s 147 is invalid, if application of mind is demonstrable from the material on record. From the record, it emerges that the reasons recorded were placed before the Assistant Commissioner along with other details in prescribed format. It was only after perusing such details that the Assistant Commissioner agreed that it was a fit case for issuing notice u/s 148 of the Act. Thus, this is not a case where such permission can be stated to have been granted without application of mind. We are satisfied from the overall facts and circumstances that the provisions of the Act are duly complied with in the action of the Joint Commissioner.

16.5 Considering the main ground of challenge whether in the circumstances reflected in the reasons recorded would lead this court to hold that there was no suppression on the part of the assessee in disclosing fully and truly all material facts. This aspect has two limbs--firstly, whether in fact there was a full and true disclosure on the part of the assessee, and, secondly, whether from the material the Assessing Officer had with him, he in fact had formed a reason to believe that the income chargeable to tax had escaped the assessment.

16.6 The assessee at the time of original assessment in a scrutiny provided details of all the three companies. And as per the reasons recorded, the investments made by the assessee were funded by the companies which were found to be bogus. These details were culled out from the statement on oath given by the husband of the petitioner u/s 131(1)(a) on February 8, 2013. The assessment, as noted hereinabove, was concluded on scrutiny on July 1, 2008. Undoubtedly, the assessee provided details of companies since the investment was funded by such companies at the time of assessment. However, later on very existence of the companies was in doubt inasmuch as one Shri Rajesh Jain of Delhi and Shri Amrutlal of Mumbai were the persons through whom the husband of the petitioner was introduced to such companies and when whereabouts of these two persons were inquired, he had pleaded ignorance. The Assessing Officer, therefore, noted that the source of investment in such circumstances remained unexplained as the companies are found to be bogus and in the books of account of the assessee, such investments were not found and were squared off during the financial year itself.

16.7 To such last portion of reasons recorded, i.e., the absence of reflection of such investment in the books of account and the same having been squared off during the financial year itself has been rigorously challenged by the petitioner. It is contended that this is completely bereft of facts, and, therefore, assumption of jurisdiction should be held invalid.

16.8 In our mind, even if the assessee is in a position to point out that such investments were part of his books of account and were not squared off in the years itself, the far more vital in the reasons recorded is the aspect of the companies from whose fund investments were made in the Assessing Officer's belief are bogus, such details had been culled out from the statement recorded

by none other than husband of the petitioner who also had stated that he had carried out the transactions in the name of his family members. It is not being disputed by the petitioner that her husband, Mr. Ashwin Jain, who gave his statement was not truthful in so contending.

16.9 As held by the apex court in *Phool Chand Bajrang Lal v. ITO* (supra) where transaction itself on the basis of subsequent information is found to be a bogus transaction, the court held that mere disclosure of such transaction at the time of original assessment proceedings, cannot be said to be a disclosure of: "full" and "true" facts and the Assessing Officer surely would have jurisdiction to reopen the concluded assessment in such a case. The apex court also had observed in the said case that the Assessing Officer may start reassessment proceedings either because some fresh facts 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 drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the income tax Officer, the sufficiency of reasons for forming the belief, is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and nonspecific information. To that limited extent, the court may look the conclusion arrived at by the income tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by him and further whether that material had any rational connection or a live link with the formation of the requisite belief.

17. In the instant case also, these observations and findings would have a direct bearing. The Assessing Officer, at the time of making the original assessment though made an enquiry, could not have found by further inquiry or investigation whether such transactions were genuine or not. However, on the basis of the subsequent informations, he arrived at such conclusion after satisfying both the conditions prescribed u/s 147 that the assessee failed to disclose fully and truly all material facts at the time of original assessment and, therefore, the income chargeable to tax had escaped assessment. The Assessing Officer certainly would assume jurisdiction u/s 147.

18. The contention raised before us that the Assessing Officer had all the powers to further probe into the controversies of the transactions as reflected in the return at the time of original assessment proceedings also need not be gone into at this stage. As again held by the court in the case of *Phool Chand Bajrang Lal* (supra), (page 478): "...one has to look to the purpose and intent of the provisions. One of the purposes of section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It

would, be travesty of justice to allow the assessee that latitude".

18.1 In the instant case also, we noticed that the Assessing Officer on the basis of the material provided by the investigating wing; particularly the statement recorded u/s 131(1)(a) notices the falsehood in the disclosure made by the assessee at the time of original assessment. Assuming that the dealing of the petitioner was only with one company and not all of the three companies. In the wake of the information received by the Assessing Officer, when formed a belief that the investment made from the funding of such companies which are bogus, the Assessing Officer had rightly assumed the jurisdiction of initiating the reassessment proceedings. The Assessing Officer, on the basis of information subsequently having come to his knowledge, recognized untruthfulness of the facts furnished earlier, he surely cannot be said to have changed his opinion on the same facts. The apex court also, while analysing what amounts to "full" and "true" facts in the case of *Sri Krishna P. Ltd. v. ITO* reported in [1996] 221 ITR 538 (SC) has held the income tax Officer can issue notice u/s 148 of the income tax Act, 1961, proposing to reopen an assessment only where he has reason to believe that on account of either the omission or failure on the part of the assessee to file the return or on account of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, income has escaped assessment. The existence of the reason to believe is intended to be a check, a limitation, upon his power to reopen the assessment. Section 148(2) imposes a further check upon the said power, viz., the requirement of recording of reasons for such reopening by the income tax Officer. Section 151 imposes yet another check upon the said power, viz., the Commissioner or the Board, as the case may be, has to be satisfied, on the basis of the reasons recorded by the income tax Officer, that it is a fit case for issuance of such notice. The power conferred upon the income tax Officer by sections 147 and 148 is thus not an unbridled one. It is hedged in with several safeguards conceived in the interest of eliminating room for abuse of this power by the Assessing Officers. The idea was to save the assessee from harassment resulting from mechanical reopening of assessments but this protection avails of only to those assessee who disclose all material facts truly and fully. The apex court, while referring to the decision of the Constitution Bench in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, observed and held thus (page 547 of 221 ITR):

In that case, the alleged non-disclosure of material facts fully and truly--to put in the words of the court--was the failure of the assessee to disclose "the true intention behind the sale of the shares". The assessee had stated during the assessment proceedings that the sale of shares during the relevant assessment years was a casual transaction in the nature of mere change of investment. The income tax Officer found later that those sales were really in the nature of trading transactions. The case of the Revenue was that the assessee ought to have stated that they were trading transactions and that his assertion that they were casual transactions, in the nature of change of investment, amounted to

"omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" within the meaning of section 34. This contention of the Revenue was rejected holding that the true nature of the transaction, being a matter capable of different opinions, is not a material or primary fact but a matter of inference and, hence, it cannot be said that there was an omission or failure of the nature contemplated by section 34 on the part of the assessee. Now, what needs to be emphasized is that the obligation on the assessee to disclose the material facts--or what are called, primary facts--is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full--"fully and truly". A false assertion, or statement, of material fact, therefore, attracts the jurisdiction of the income tax Officer u/s 34/147. Take this very case: the income tax Officer says that on the basis of investigation and enquiries made during the assessment proceedings relating to the subsequent assessment year, he has come into possession of material, on the basis of which, he has reasons to believe that the assessee had put forward certain bogus and false unsecured hundi loans said to have been taken by him from non-existent persons or his dummies, as the case may be, and that on that account income chargeable to tax has escaped assessment. According to him, this was a false assertion to the knowledge of the assessee. The income tax Officer says that during the assessment relating to the subsequent assessment year, similar loans from some of these very persons were found to be bogus. On that basis, he seeks to reopen the assessment. It is necessary to remember that we are at the stage of reopening only. The question is whether, in the above circumstances, the assessee can say, with any justification, that he had fully and truly disclosed the material facts necessary for his assessment for that year. Having created and recorded bogus entries of loans, with what face can the assessee say that he had truly and fully disclosed all material facts necessary for his assessment for that year. True it is that the income tax Officer could have investigated the truth of the said assertion--which he actually did in the subsequent assessment year--but that does not relieve the assessee of his obligation, placed upon him by the statute, to disclose fully and truly all material facts. Indubitably, whether a loan, alleged to have been taken by the assessee, is true or false, is a material fact--and not an inference, factual or legal, to be drawn from given facts. In this case, it is shown to us that ten persons (who are alleged to have advanced loans to the assessee in a total sum of Rs. 3,80,000 out of the total hundi loans of Rs. 8,53,298) were established to be bogus persons or mere name lenders in the assessment proceedings relating to subsequent assessment year. Does it not furnish a reasonable ground for the income tax Officer to believe that on account of the failure--indeed not a mere failure but a positive design to mislead--of the assessee to disclose all material facts, fully and truly, necessary for the assessment for that year, income had escaped assessment? We are of the firm opinion that it does. It is necessary to reiterate that we are now at the stage of the validity of the notice u/s 148/147. The enquiry at this stage of the only to see whether there are reasonable grounds for the income tax Officer to believe

and not whether omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind.

18.2 Thus, where the information furnished is found to be false, there could not be possibly any objection to the notice u/s 148. Till completion of scrutiny assessment, the information provided mentioned clearly that investments made by the petitioner were from the funds of the companies and, therefore, there was no question of treating them as bogus. However, subsequently when on an investigation, after completion of assessment under sub-section (3) of section 143, the same is found to be bogus, notice u/s 148 of the Act deserves to be held valid. To a limited extent, this court has looked into the conclusion arrived at by the Assessing Officer in examining whether there was any material available on the record for the Assessing Officer to form a requisite belief and whether such material had any rational link with the income that escaped assessment and from such scrutiny, we conclude that no inference is called for at this juncture. Proceedings of reassessment initiated by the Assessing Officer on the basis of subsequent information which is found to be relevant and specific and when the Assessing Officer after recording the reasons for formation of his belief that in the original assessment, the assessee failed to disclose fully and truly facts, and, therefore, the income chargeable to tax to the extent of Rs. 33.90 lakhs (rounded off) escaped assessment has correctly exercised the jurisdiction provided u/s 147, and, therefore, this petition must fail with an observation that in the reassessment proceedings, nothing observed by this court hereinabove shall come in the way of either side in putting forth their respective case and uninfluenced by such observations, the Revenue authorities shall decide the reassessment proceedings.

In the result, the special civil application fails. Notice discharged with no order as to costs.