
(1972) 12 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No's. 611, 1557 to 1559 and 3352 to 3357 of 1969

Thanthi Trust

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1974) ILR (Mad) 409 : (1973) 91 ITR 261

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : C.K. Daphtary, K. Srinivasan, D.S. Meenakshisundaram, K.C. Rajappa and R. Pandian, for the Appellant; T.V. Viswanatha Iyer and V. Srinivasan, for the Respondent

Judgement

Ramanujam, J.—As all the above writ petitions are connected and the main points involved are also the same, they are dealt with together.

2. The petitioner in all these cases is the same. One Sri S. B. Adityan, started publication of a daily newspaper known as " Dina Thanthi" in Tamil as a proprietary concern in the year 1942. Later, he executed a trust deed on March 1, 1954: whereunder he constituted a trust called " Thanthi Trust ", consisting of the properties described in the schedule thereto, for the following purposes :

(a) to establish the Dina Thanthi or Daily Thanthi as an organ of educated public opinion for the Tamil reading public,

(b) to disseminate news and to ventilate opinion upon all matters of public interest through the said newspaper,

(c) to maintain the said newspaper and its press in an efficient condition, devoting the surplus income of the said newspaper and its press, after defraying all expenses, in improving and enlarging the said newspaper and its services and placing the same on a footing of permanency.

2. Under that deed he nominated himself, his brother, S. T. Adityan, and his son, B. R. Adityan, as the first trustees. The schedule to the trust deed referred to the newspaper known as " Dina Thanthi " as a going concern with all its assets and liabilities, including the printing machineries, printing types, furniture and accessories as the properties of the said " Thanthi Trust".

3. After the said trust was created, it claimed exemption u/s 4(3)(i) of the Indian Income Tax Act, 1922, from the assessment year 1955-56 onwards in respect of its income, and sought an order of exemption from the Income Tax Officer even before the regular assessments could be made. On November 6, 1961, the Income Tax Officer gave a tentative decision negating the petitioner's claim for exemption based on the opinion tendered by the Central Board of Revenue that the trust will not be entitled to the benefit of exemption u/s 4(3)(i) of the Act, as the real object of the trust is different from its declared object and the income derived from the paper is not applied wholly for religious and charitable purposes as contemplated in the said section. The petitioner filed S.B. Adityan and Others Vs. First Income Tax Officer, Madras., before this court questioning the correctness of that order passed by the Income Tax Officer. It also filed W. P. Nos. 276 to 282 of 1963 for the issue of writs of prohibition forbearing the assessing authority from proceeding with the assessment proceedings for the assessment years 1955-56 to 1961-62. This court quashed the said order by its common judgment dated October 4, 1963 on the ground that there was no provision of law enabling the Income Tax Officer to give any advance decision on a relief claimed by the assessee as regards their assessment and that as such the claim for exemption u/s 4(3)(i) could be considered and decided only as part of the assessment itself. The writs of prohibition were, however, dismissed as being misconceived. The court expressed that the Income Tax Officer is free to investigate and decide the question of exemption at the stage of the assessments without reference to any opinion expressed by the Central Board of Revenue on that question. The court also expressed its views on the nature of the enquiry to be made by the Income Tax Officer. The court stated that the Income Tax Officer is not bound to confine himself to the terms of the trust deed, that it is open to him to hold such enquiry as he considers necessary on the questions whether the declared charitable purpose as found in the instrument is really a charitable purpose, whether the purpose stated in the instrument is a real purpose and whether the whole or part of the income is to be excluded from tax, and that he is entitled to call upon the assessee to produce all necessary material to substantiate the claim for exemption.

4. Subsequent to the said decision of this court the Income Tax Officer specifically considered the claim of the petitioner for exemption in relation to its entire income u/s 4(3)(i) and upheld that claim for the assessment years 1955-56 to 1961-62 on various dates as set out below ;

Date of original assessment Assessment year

17-3-1965 1960-61

31-3-1965 1959-60

22-3-1966 1955-56

22-3-1966 1956-57

22-3-1966 1957-58

22-3-1966 1958-59

22-3-1966 1961-62

5. When the Income Tax Act of 1922 was replaced by the Income Tax Act of 1961, Section 11 of the latter Act which gave exemption for income from property held for charitable or religious purposes was slightly in a different form than the earlier provisions in Section 4(3)(i). Presumably taking note of the said change in the statutory provisions, the founder of the trust had executed a supplemental deed on June 28, 1961. Under that document the founder had directed that the surplus income of the " Thanti Trust", after defraying all expenses, shall be devoted by the trustees for the following purposes, namely :

- (1) Establishing and running a school or college for the teaching of journalism;
- (2) Establishing and/or running or helping to run schools, colleges or other educational institutions for teaching arts and science;
- (3) Establishing of scholarships for students of journalism, arts and science;
- (4) Establishing and/or running or helping to run hostels for students ;
- (5) Establishing and/or running or helping to run orphanages; and
- (6) Other educational purposes.

6. After the coming into force of the new Act of 1961, the petitioner-trust claimed exemption u/s 11 of that Act on the basis of the original trust deed dated March 1, 1954, as well as the supplemental deed dated June 28, 1961. This claim for exemption was also considered and upheld by the concerned Income Tax Officer for all the assessment years from 1962-63 to 1967-68, on the following dates :

Date of assessment Assessment year

30- 3-1967 1962-63

25-10-1967 1963-64

19- 2-1968 1964-65

23 -2-1968 1965-66

10 -7-1968 1966-67

22-3-1968 1967-68

7. In all these assessment orders the Income Tax Officer has specifically found that 75% of the income of the trust had been applied for a recognised charitable purpose, namely, education.

8. The petitioner was all along an assessee on the file of the Income Tax Officer, City Circle II(3), till February 15, 1969, when its file was transferred to the Income Tax Officer, City Circle II(1). After such transfer the said Income Tax Officer issued a notice dated February 17, 1969, u/s 143(2) of the Income Tax Act, 1961, calling upon the petitioner to produce its books of accounts relevant for the assessment year 1968-69 in respect of which assessment was pending, and for six previous years. In compliance with the said notice, the petitioner, however, produced its books relevant for the assessment year 1968-69 alone before the Income Tax Officer on February 22, 1969, and requested the Income Tax Officer by a letter dated February 22, 1969, to indicate the purpose for which he required the production of the petitioner's account books relevant for the earlier six assessment years. The Income Tax Officer gave a reply stating that the purpose for which he required the account books relevant for the earlier six assessment years was to enable him to examine the account books for liability u/s 11(3) and 11(4) of the Income Tax Act of 1961, in the light of the judgment of the High Court in *P. Ramaratnam, C. Munuswami, Vazhi Thunairaman, V. Natesan* (Accused Nos. 1 to 4) appellants (Criminal Appeal No. 810 of 1965 dated 4-4-1968). He also sent a notice u/s 142(1) of the Act, requiring the production of the said books of accounts relevant for the assessment years 1965-66 to 1967-68 on February 22, 1969. In compliance with the said notice the petitioner produced on February 28, 1969, the account books relevant for the assessment years 1965-66 to 1967-68 as enjoined by the notice u/s 142(1) of the Act. The Income Tax Officer immediately impounded the said account books. On the same date the Income Tax Officer issued summons u/s 131 of the Act for the production of the books of accounts relevant for the assessment years 1962-63 to 1964-65 on or before March 3, 1969. The petitioner immediately filed Writ Petition No. 611 of 1969 questioning the validity of the said summons issued u/s 131, contending that the Income Tax Officer had acted without jurisdiction and without authority of law in issuing the said summons and that the impugned summons was violative of the fundamental rights under Article 19(1)(g) of the Constitution, and obtained stay.

9. Pending the above writ petition, the same Income Tax Officer issued three notices dated May 23, 1969, u/s 148 of the Act, to the petitioner for reopening the assessment for the three earlier assessment years 1965-66 to 1967-68 stating that he had "reason to believe" that there has been an escapement of income chargeable to tax in the above assessment years and directing the petitioner to file its returns of income in relation to the said assessment years. The notices also stated that the necessary sanction of the Commissioner of Income Tax and the Central Board of Revenue for issuing the notices had been obtained. The petitioner has filed Writ Petitions Nos. 1557 to 1559 of 1969 questioning the validity of the said notices issued u/s 148 on various grounds,

which we shall detail later. In these writ petitions also the petitioner had obtained stay of the reassessment proceedings.

10. Subsequently, the Income Tax Officer, Special Investigation Circle I, had issued similar notices to the petitioner u/s 148 proposing to reassess the income for the six assessment years from 1956-57 to 1961-62, and calling upon the petitioner to submit returns of its income for the respective assessment years in the prescribed form. These notices also stated that the necessary sanction of the Central Board of Direct Taxes had been obtained for the issue of those notices. Against the notices issued u/s 148 in relation to the said six assessment years, the petitioner has filed Writ Petitions Nos. 3352 to 3357 of 1969 questioning the validity of the same on the same grounds as they had raised in the earlier Writ Petitions Nos. 1557 to 1559 of 1969. Here also the petitioner has obtained stay of the reassessment proceedings in relation to the said six years.

11. So far as Writ Petition No. 611 of 1969 is concerned, the petitioner had sought a writ of prohibition forbearing the Income Tax Officer from enforcing the summons dated February 28, 1969, to produce the account books relating to the assessment years 1962-63 to 1964-65 in connection with the assessment proceedings for the year 1968-69. It is now found that the assessment for the year 1968-69 has been completed even without the production of the said account books, and the learned counsel for the revenue has stated before us that, in view of the completion of the assessment for the year 1968-69 with reference to which the account books have been called for by the issue of the summons u/s 131, the said account "books are no longer required and the summons impugned in the writ petition will not be enforced. In the light of the above representation made it is unnecessary for us to go into the merits of the contentions raised by the petitioner in the above writ petition. The said writ petition is, therefore, dismissed as having become unnecessary.

12. As regards the other nine writ petitions, the petitioner contends that the various notices issued u/s 148 of the Act, seeking to reopen the petitioner's assessments for the assessment years 1956-57 to 1961-62 and 1965-66 to 1967-68 are ex facie illegal, arbitrary and without jurisdiction for the following reasons :

(1) the impugned notices seeking to invoke the provisions of Section 147 on the ground that there has been an escapement of income chargeable to tax is totally devoid of jurisdiction, as there is absolutely no material to show that the petitioner-trust is not entitled to the exemption or that its income has escaped assessment during the respective years;

(2) there has been no failure on the part of the petitioner to make a full and true disclosure of the material facts necessary for the completion of the assessments in question so as to enable the respondent to invoke Section 147(a);

(3) the impugned notices u/s 148 had been issued with the sole object of making a roving enquiry into the working of the petitioner-trust and the alleged " reason

to believe " is a mere cloak or pretence on the part of the respondent to clutch at jurisdiction and to reopen assessments which have become final; and

(4) the notices issued by the respondent do not satisfy the conditions laid down either in Section 147(a) or 147(b) of the Act.

13. The respondent, on the other hand, contends that though the assessments for the various years in question had been completed and the petitioner had been given the exemption u/s 4(3)(i) of the old Act, or u/s 11 of the new Act, in respect of its entire income for each of the years, certain information and materials received subsequent to those assessments had showed that the petitioner-trust was only illusory and nominal, that the investments of its funds had been made with the primary object of benefiting the founder of the trust and the members of his family and in disregard of fiduciary considerations, that substantial amounts were found to have been lent, without security, to certain allied concerns of the founder and/or his family, that large sums of money were found to have been utilised not for the declared objects of the trust but for extraneous non-charitable purposes, that there has been concealment of substantial income from its account, that the entries relating to the several items of debits towards expenses appear to have been inflated and that investments of trust funds outside the books of accounts were also traced indicating that they might have come out of its undisclosed income. He states that on the basis of the information and material aforesaid, which were also fortified to a considerable extent by the observations made by the High Court in its judgment dated April 4, 1968, in Criminal Appeal No. 810 of 1965 he had "reason to believe" that the income chargeable to tax has escaped assessment in all the assessment years in question. The respondent specifically denies that his sole intention in issuing the impugned notices u/s 148 of the Act was to institute a roving enquiry and that the reasons for his belief were a mere cloak or pretence to clutch at jurisdiction u/s 147 as alleged by the petitioner, and states that the notices came to be issued only after considerable materials had come into his possession on which a reasonable belief was entertained by him that the petitioner's income chargeable to tax had escaped assessment. It is in the face of these rival contentions we have to consider the validity of each of the notices issued by the respondent u/s 148 of the Act.

14. Sri C. K. Daphtary, learned counsel for the petitioner in all the writ petitions, contends that there is absolutely no ground for reopening the assessments for the various years, that there can absolutely be no "reason to believe" that the income chargeable to tax has escaped assessment in those years, that the fresh information and materials said to have been received by the respondent were all there even at the stage of the original assessments and that there was a full and thorough investigation of all the materials by the authorities at all levels before the exemption was granted. He also contends that the notices in all these cases do not indicate as to whether the reassessments are proposed on the basis of non-disclosure by the assessee as contemplated in Section 147(a) or the fresh

information contemplated in Section 147(b), that Section 147 is intended to prevent unnecessary harassment of the assessee by the Income Tax Officers, that the power of reassessment under that section can be invoked only when the conditions set out therein are fully satisfied, and that the notices do not indicate as to what are the new and fresh materials available with the Income Tax Officer warranting a belief that the income chargeable to tax has escaped assessment and the initiation of proceedings under the said section. It is also urged that, even though sufficiency of the materials is not for the court to decide at this stage, when the assessee pleads that there can be no reason to believe, the court has to consider whether the materials available are new and whether they are relevant. According to the learned counsel, though the court cannot go into the question of sufficiency of the materials, it is under a duty to find out the quality and the relevancy of the material which is sought to be relied on by the Income Tax Officer for the purpose of reopening the assessments u/s 147, and it must be satisfied about the existence of the relevant materials on which "reason to believe" is based. The learned counsel also states that the counter affidavit filed by the respondent in each of these cases is bereft of any details as to the nature of the fresh materials available, and the relevancy of that material for any particular year, and that, in the absence of such details in the counter-affidavit, the petitioner is not in a position to establish that there is no fresh material for the purpose of invoking Section 147.

15. The learned counsel referred to the decisions in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, ., *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, and *Commissioner of Income Tax, West Bengal, and Another Vs. Hemchandra Kar and Others*, . in support of his plea that Section 147 is intended to prevent unnecessary harassment of the assessee by the Income Tax Officers changing opinions at different stages on the same materials and that, therefore, the respondent can invoke the authority u/s 34 of the old Act and Section 147 of the new Act only if the conditions set out therein exist and not otherwise.

16. In *Calcutta Discount Co. Ltd. v. Income Tax Officer* the Supreme Court came to consider the scope of Section 34(1) for the first time. In that case in the original assessments for the assessment years 1942-43, 1943-44 and 1944-45, profits realised by a company by sale of shares were not assessed to tax on the ground that they were in the nature of mere change in investments. The Income Tax Officer later proposed to initiate reassessment proceedings against the company by issuing notices u/s 34, and in his reports to the Commissioner for the purpose of obtaining sanction he had stated that at the time of the original assessments the representations made on behalf of the company that the sales of shares were casual transactions in the nature of mere change of investments were accepted, but that the company's accounts showed that it had been really and systematically carrying on a trade in the sale of investments, that the purchase and sale of shares were not casual transactions and that there has been a non-disclosure of the true intention behind the sale of shares. The

Supreme Court, after dealing with the scope of Section 34 of the Act exhaustively, if we may say so with respect, held that the question whether the sale of shares were by way of change of investments or by way of trading in shares had to be decided by the Income Tax Officer on a consideration of different circumstances, including the frequency of the sales, the nature of the shares sold, the price received as compared with the cost price, and several other relevant facts, that though it was the duty of the company to disclose all the primary facts which had a bearing on that question, the law did not require the company to state the conclusion that could reasonably be drawn from the primary facts, and that the Income Tax Officer who issued the notices did not have any material before him for believing that there had been any material non-disclosure by reason of which an underassessment had taken place. As to the scope of Section 34, their Lordships of the Supreme Court stated:

" The scheme of the law clearly is that where the Income Tax Officer has reason to believe that an underassessment has resulted from nondisclosure he shall have jurisdiction to start proceedings for reassessment within a period of eight years; and where he has reason to believe that an under-asses'sment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within four years. Both the conditions, (i) the Income Tax Officer having reason to believe that there has been under-assessment, and (ii) his having reason to believe that such underassessment has resulted from non-disclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start proceedings after the expiry of four years. The argument that the court ought not to investigate the existence of one of these conditions, viz., that the Income Tax Officer has reason to believe that under-assessment has resulted from non-disclosure of material facts, cannot therefore be accepted.

The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of " under-assessment", that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non-disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special jurisdiction is that the Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts.

Clearly it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income Tax Officer had no material at all before him for believing that there had been such nondisclosure."

17. The above decision is clearly an authority for two propositions, (1) that the court must be satisfied as to the existence of the two conditions, namely, (i) reason to believe that there has been underassessment, (ii) such underassessment has resulted from the non-disclosure of primary and material

facts; and (2) that if all the primary and material facts had been placed by the assessee before the Income Tax Officer at the stage of the original assessment, the assessee cannot be said to be guilty of non-disclosure as the Income Tax Officer failed to draw a proper factual or legal inference from those basic and primary facts.

18. In *S. Narayanappa v. Commissioner of Income Tax* the Supreme Court again reiterated the same principle thus:

" But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any nondisclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged, by the assessee, but not the sufficiency of the reasons for the belief."

19. As regards the scope of the expression "reason to believe" in Section 34 of the Act, their Lordships of the Supreme Court stated that it does not mean a purely subjective satisfaction on the part of the Income Tax Officer, that it postulates belief and the existence of reasons for that belief, that the belief must be held in good faith and it cannot be merely a pretence and that the existence of the belief and the reasons for the belief are justiciable. But on the question whether the assessee should be informed of the material available on which the belief was entertained, the Supreme Court has held that the Income Tax Officer is bound to disclose to the assessee the materials on the basis of which the belief that the income has escaped assessment was entertained.

19. In *Commissioner of Income Tax v. Hemchandra Kar*, an assessee, a Hindu undivided family consisting of six members, had originally been assessed for the assessment year 1946-47. Following the demonetisation of high denomination notes in January, 1946, the assessee encashed notes of the value of Rs. 19,000 and five members of the family encashed notes of the aggregate value of Rs. 1,10,000. The Income Tax Officer reopened the assessments of the assessee and of the five members and by his reassessment orders made on January 31, 1955, included the sum of Rs. 19,000 in the reassessment of the family and the sum of Rs. 1,10,000 separately in assessments of the five members in respect of the respective notes encashed by them. Two days later, i.e., on February 2, 1955, the Income Tax Officer issued a notice u/s 34(1)(a) of the Indian Income Tax Act, 1922, seeking to include the sum of Rs. 1,10,000 in the hands of the family on the ground that the notes encashed by the five members belonged to the Hindu undivided family. The Tribunal upheld the said reassessment. The validity of that notice was challenged and ultimately the matter came to the High Court on a

reference. The High Court held that the notice dated February 2, 1955, was not valid, since it was found that when the first reassessment was made the primary facts necessary for reassessment of the family were in the possession of the Income Tax Officer, that at the time of the first reopening of the assessment of the Hindu undivided family and of the individual members the question of assessment of the entire amount represented by the high denomination notes was under direct consideration, that it was open to the Income Tax Officer to assess the whole amount of Rs. 19,000 and Rs. 1,10,000 in the hands of the Hindu undivided family at that stage, and that the escapement, if any, therefore, took place by reason of the failure of the Income Tax Officer to assess the family with respect to the sum of Rs. 1,10,000 when he was in full possession of all the material facts. On appeal, the Supreme Court affirmed the decision of the High Court holding that because the primary facts were within the knowledge of the Income Tax Officer when he completed the first reassessment, the escapement of income took place by reason of the failure of the Income Tax Officer to include the sum of Rs. 1,10,000 in the assessment of the Hindu undivided family when he was in full possession of all the necessary and material facts and that in such a situation the requirements of Section 34(1)(a) were not satisfied.

20. The above decisions dealing with the scope of Section 34 of the Act have clearly pointed out that in matters of this kind one has to see whether the Income Tax Officer could have reason to believe that due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, there has been an escapement of income or whether the escapement of income has resulted by reason of the failure of the Income Tax Officer to draw the proper factual or legal inference from the primary and other facts furnished by the assessee. It is well established by these and other decisions that the words "reason to believe" used in Section 147 mean a belief which an honest and reasonable person based upon reasonable grounds would entertain on facts before him, that a notice u/s 148 calling for a return need not set out the reason for such a belief, or specify the item of income which has escaped assessment or the source of income, or indicate whether it is issued under Clause (a) or Clause (b) of Section 147, that the Income Tax Officer is, however, bound to disclose all the necessary materials to the assessee at the stage of the reassessment proceedings so as to enable him to put forward all his objections to the proposed reassessment. It is also well established by now that the Income Tax Officer is not required to convene the assessee, or to intimate to him the nature of the alleged escapement or to give him an opportunity of being heard, before he decides to issue a notice u/s 148 (vide *Commissioner of Income Tax v. Mahaliram Ramjidas* [1940] 8 ITR 442.). The power to issue a notice u/s 148 is made conditional on the Income Tax Officer recording his reasons under Sub-section (2). The Income Tax Officer is bound to record his reasons before issuing a notice under Sub-section (1), and it is on the basis of those reasons recorded by him the Commissioner's or the Board's sanction must be obtained in cases where action is taken after the lapse of four years or eight years, as the

case may be, as contemplated in Section 151. Such reasons recorded by the Income Tax Officer need not be communicated or disclosed to the assessee before reassessment proceedings u/s 147 actually commence, but they have to be disclosed to the court when his jurisdiction to issue the notice is challenged on the ground that there is no reason to believe that certain income has escaped assessment by omission or failure of the assessee to disclose fully and truly all material facts necessary for his assessment, and the Income Tax Officer has to justify his assumption of jurisdiction only on those recorded reasons.

21. The learned counsel for the petitioner submits that the Income Tax Officer, at the stage of the original assessment proceedings, had thoroughly examined all the facts which are now referred to in the counter-affidavit and was satisfied with the explanations given by the petitioner, and, therefore, the Income Tax Officer had no reason to believe that by reason of the omission or failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the various years the income, profits and gains, chargeable to Income Tax for those years, have escaped assessment. According to the learned counsel, once the petitioner disputes that the Income Tax Officer had any reason before him to entertain the requisite belief and states that it had not omitted or failed to disclose fully and truly all material facts necessary at the stage of the assessment, it is the duty of the Income Tax Officer to justify his action in issuing the notices by setting out in his counter-affidavit filed before the court all the facts and circumstances which led him to entertain the belief and by producing before the court all the materials in his possession. The learned counsel took us through the counter-affidavit filed in each of these cases and stated that the averments therein are so vague that no weight could be attached to the same. He also complains that no details are given in the counter-affidavits to show whether the respondent is invoking Clause (a) or Clause (b) of Section 147. The learned counsel took pains to convince us that there had been a thorough and full-fledged enquiry by the Income Tax Officer as also by the higher authorities at all levels on the question of exemption of the income of petitioner-trust at the stage of the assessments, that all the relevant materials had been considered at that stage, and that the respondent proposed to initiate reassessment proceedings only on the basis of a change of opinion. He referred us to the various queries made by the Income Tax Officer at the stage of the assessments for the various years and also the replies given by the petitioner on various matters.

22. Though in the counter-affidavit it has been stated that the deponent was not aware of the fact that the earlier orders of exemption had been granted after a thorough and exhaustive enquiry by the Income Tax Officer, Mr. T. V. Viswanatha Iyer, the learned counsel appearing for the revenue, submits that we may proceed on the basis that there was a thorough and exhaustive enquiry by the assessing officer at the stage of the assessments on the question of exemption of the income of the trust. According to him even if a thorough and exhaustive enquiry has been made by the Income Tax Officer at the stage of the original

assessments, still Section 147 could be invoked if fresh material which subsequently came to the possession of the department shows that the disclosure made by the petitioner at the stage of the original assessments was neither full nor true, and in this case the assessing officer had sufficient material before him to entertain a belief that the income of the petitioner had escaped proper assessment. The nature of the enquiry held at the stage of the assessments is said to be not quite relevant for the purpose of finding out whether the impugned notices have been properly issued. In support of his contention that even in cases where there has been full and elaborate enquiries at the stage of original assessment, Section 147(a) could still be invoked, he refers to the decisions in *Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor*, *Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry*, *Commissioner of Income Tax, Madras Vs. T.S.Pl.P. Chidambaram Chettiar (Dead) through Legal Representatives*, and *K.P. Arthanariswamy Chettiar and Others Vs. First Income Tax Officer*. In *Income Tax Officer v. Bachu Lal Kapoor* the Supreme Court laid down the proposition that the acceptance of a return or the completion of the assessment does not take away the jurisdiction of the Income Tax Officer to issue a notice to reassess on the ground that the information supplied by the return was not correct. In *Kantamani Venkata Narayana & Sons v. First Additional Income Tax Officer* the Supreme Court held that the assessee does not discharge his duty to disclose by merely producing the books of account or other evidence. He has to further bring to the notice of the income tax Officer particular items in the accounts or the documents which are relevant. Even in cases where the Income Tax Officer, if he had been circumspect, could have found out the truth from the books and other documents produced, he is not precluded from exercising the power to assess the income which had escaped assessment. In the third case reassessment proceedings were upheld as fully satisfying the requirement of section 34(1)(a) notwithstanding the fact that the assessing officer had before him the item of undisclosed income, which was the subject-matter of the reassessment at the time of assessment. It was held that the fact that the officer could have further inquired into that matter but did not do so, did not take the case out of Section 34 (1)(a). In the fourth case, in the original assessment of an assessee, a borrowal from a banker was accepted as true and the interest paid thereon allowed as deduction. But the said banker in the course of his assessment proceedings denied the advance to the assessee. Then a notice u/s 147 was issued. That notice was challenged by the assessee contending that all the primary facts were before the assessing officer when the assessment was completed. A Bench of this court, to which one of us was a party, held that, notwithstanding the fact that the item of the borrowal from the banker was considered and allowed at the stage of the original assessment, still the Income Tax Officer could invoke section 147(a) on the basis of the subsequent information secured from a co-ordinate official who made the assessment on the banker, which, if accepted, would lead to a reasonable belief that the disclosure made by the assessee in the first instance was not true. Thus, we find the recent

trend of judicial decisions to be that even if the Income Tax Officer has at the stage of assessment been satisfied with the facts and materials disclosed by the assessee and completed the assessment on the basis of such materials disclosed, if, subsequently, on receipt of information, he has reason to believe that some of the facts and materials were not true or complete, he would have reason to believe that income has escaped assessment due to the assessee's failure to disclose truly and fully all materials necessary for the assessment.

23. Though the impugned notices do not indicate whether the reopening is proposed under Clause (a) or Clause (b), the learned counsel for the revenue states the Income Tax Officer proposes to reopen the assessments only under Clause (a) and not under Clause (b), and this, the learned counsel says, is clear from the notices themselves. He points out that reference to the sanction obtained from the Commissioner of Income Tax or the Central Board of Revenue in the notices indicates that action is being taken only under Clause (a) of Section 147, as no such sanction is necessary or contemplated in cases coming under Clause (b).

24. We, therefore, proceed to consider whether the impugned notices could be sustained as having been validly issued for initiating proceedings u/s 147(a). Clause (a) of Section 147 may be usefully set out at this stage :

" 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

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the 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)."

25. A reading of the above section along with sections 148 to 153 shows that the right to take action under Clause (a) of the said section is subject to the following conditions:

(1) The Income Tax Officer should have reason to believe that income chargeable to tax has escaped proper assessment.

(2) He should have reason to believe that such escapement was by reason of the omission or failure on the part of an assessee to disclose fully and truly all material facts for his assessment for that year.

(3) He must issue a notice u/s 148 calling for a return of income within the time limit prescribed in Section 149.

(4) He must, before issuing such a notice, record his reasons for doing so.

(5) The notice u/s 148 should be issued only after obtaining the prior sanction of the Commissioner or the Board u/s 151 in cases where action is taken after the lapse of four or eight years respectively.

(6) The assessment or reassessment u/s 147 should be completed within the time limit prescribed u/s 153(2).

26. It cannot be disputed that conditions Nos. 3, 4 and 5 are satisfied in those cases which fall u/s 147(a). Condition No. 6 will not arise at this stage when the reassessment proceedings are yet to commence. The question is whether conditions Nos. 1 and 2 are satisfied in these cases.

27. To show that the above two conditions are satisfied, the learned counsel for the revenue has placed before us all the files relating to the issue of the impugned notices. While the assessment files show the nature of the enquiry conducted at the original stage as also the materials available before the Income Tax Officer at that time, the files relating to the issue of the impugned notices contain certain information which the Income Tax Officer is said to have received subsequent to the completion of the assessments for the nine years in question, as also his reasons for issuing the notice u/s 148(1). Those reasons are contained in the reports submitted by him to the Commissioner of Income Tax and also the Central Board for getting the requisite sanction u/s 151 for initiating action u/s 147(a). From those reasons set out for the various years it is seen that some new materials which were not available before the Income Tax Officer at the time of the original assessment have come to his possession from various sources.

28. The learned counsel for the petitioner, however, states that there is no allegation of non-disclosure of primary facts in the counter-affidavits, that if the averments made therein are taken to indicate the substance of the materials available, they would not constitute any new material, for all those materials had been considered in elaborate detail by the Income Tax Officer at the stage of the original assessment, that a mere change of opinion on the part of the Income Tax Officer on the same materials will not enable him to initiate proceedings u/s 147(a), and that the counter-affidavits cannot be supplemented at the time of arguments by the production of some records for the perusal of the court alone. We are not, however, inclined to hold that the counter-affidavit alone should be looked into for deciding the question of jurisdiction. It is true that some of the matters referred to in the counter-affidavits had been considered by the Income Tax Officer at the stage of the original assessments as seen from the series of correspondence between the petitioner and the department containing queries and explanations at that stage. But, a perusal of the files and records produced before us shows that all the materials were not there at the stage of the original assessments but only a few of them had been considered and investigated. It is true that there is some overlapping of the items. But, from that circumstance alone, we are not in a position to say that all the materials which are now before the Income Tax Officer have been investigated at the assessment stage. We are

unable, therefore, to say that the Income Tax Officer has not acted in good faith and that he has issued the notices only with a view to have a fresh roving enquiry as alleged by the petitioner.

29. The learned counsel for the petitioner makes certain submissions with regard to the materials produced by the revenue before us whose details have not been set out in the various counter affidavits. It is contended that once a challenge is made by an assessee that the Income Tax Officer had no materials before him to entertain a belief that the income has escaped assessment the Income Tax Officer has to satisfy the court that he has acted within his jurisdiction in issuing the notice u/s 148 and in initiating proceedings u/s 147, by disclosing such materials as are in his possession to the court and also to the assessee so that whatever explanation he could offer in relation to those materials may be placed before the court so as to enable the court to properly appreciate the contentions of both the parties relating to the jurisdiction of the Income Tax Officer. It is pointed out that if a particular material is shown to be before the Income Tax Officer, the assessee if he becomes aware of that material may satisfy the court that the same material was before the Income Tax Officer even at the stage of the assessments, and that the Income Tax Officer merely in the guise of acting on a new material purports to change his earlier opinion. The petitioner's learned counsel also states that once the matter comes before the court on a challenge being made by the assessee on the question of jurisdiction of the Income Tax Officer to issue a notice u/s 148, the attempt to satisfy only the court about the existence of the material is not sufficient, that it is not a private matter between the Income Tax Officer and the court and that all materials which are disclosed to the court should also be disclosed to the assessee so that he will assist the court in deciding the question of jurisdiction. What the learned counsel in effect says is that the court will not be justified in deciding the question of jurisdiction on the files and records being shown to the court without the petitioner having the benefit of the information available therefrom, and that the court will have to decide the question of jurisdiction only after the disclosure of that information to the petitioner. The learned counsel, however, concedes that in exceptional cases where confidential and privileged documents are placed before the court, the adversary cannot have a right to peruse the same. But in cases where no privilege is claimed or where the documents produced are not confidential, the assessee, it is said, cannot be made to grope in the dark as it were for sustaining his plea that the Income Tax Officer has issued the notice without jurisdiction.

30. The above submission of the learned counsel for the petitioner no doubt appears to be attractive at the first blush as courts are not normally expected to receive documents and take them into consideration in deciding an issue without the other party knowing the contents thereof or having an opportunity of being heard on those documents. But, in cases like these, the courts have consistently held that disclosure to the assessee of materials which formed the basis for the issue of a notice u/s 148 is not warranted before the proceedings u/s 147 actually commence. It is by now well established by a series of decisions that the

proceedings before the actual commencement of the proceedings u/s 147 are only administrative in character and they become quasi-judicial only after the filing of the return in pursuance of the notice. The Judicial Committee in *Commissioner of Income Tax v. Mahaliram Ramjidas* has pointed out that the Income Tax Officer is not required by the section to convene the assessee or to intimate to him the nature of the alleged escapement or to give him an opportunity of being heard, before he decides to operate the powers conferred by the section, and the reasons given by them are extracted below:

" Their Lordships are of opinion, in accordance with that reasoning, that it cannot be a condition precedent to the operation of Section 34 that the Income Tax Officer should hold a quasi-judicial enquiry, because the powers necessary for such an enquiry are not conferred upon him. But there is a second consideration which is no less conclusive. The operative part of Section 34 empowers the Income Tax Officer to proceed de novo under subsection (2) of Section 22, and that in turn leads, if there should still be a question of the accuracy of the return, to an enquiry u/s 23(2) and (3), and in that enquiry the assessee has a statutory right to appear and produce evidence. Therefore, a construction of Section 34, which requires a quasi-judicial enquiry to be held, before the powers under the section can be operated would result in mere duplication of procedure and in two enquiries of the same kind, into the same matter, conducted by the same official, and without any advantage to the parties. A construction so unreasonable and unpractical ought not to be preferred when another construction is open. "

31. In (1940) 8 ITR 243 ., the Nagpur High Court declined to accept the contention that Section 34 could not be used until there had been a preliminary enquiry concluded which had resulted in the Income Tax Officer concluding that a particular item of income had been omitted on the ground that such a construction of Section 34 might result in very serious evasions. In *Rungta Engineering and Construction Co. Ltd. Vs. Income Tax Officer, Central Circle XIII*, . the Calcutta High Court had also pointed out that it is not desirable that the assessee should be informed of the materials which formed the basis of the notice u/s 34 at the time of issue of the notice and the reasons set out by the court are these :

" If the assessee is dishonest, the disclosure of the materials at this stage will be likely to lead to the manipulation of the books of accounts and other records. An honest trader who has not concealed his income has nothing to fear by submitting a fresh return and producing his account books pursuant to the notice issued by the Income Tax Officer. If the assessee is an honest trader, there is no likelihood of its incurring fresh penalties by filing a fresh return and by producing its account books. "

32. With respect, we also share the same view as has been expressed in the above decisions. The assessee cannot, in our view, compel the Income Tax Officer to disclose all the materials which formed the basis of the notice u/s 148 before he files his return in pursuance of the notice, as the proceedings before

the commencement of the reassessment is only administrative in character. As a matter of fact, courts have taken a uniform view that the disclosure of the materials at the stage of notice will be detrimental to the revenue. The learned counsel for the petitioner also concedes that the assessee is not entitled to be told about the materials which formed the basis of the notices issued by the Income Tax Officer in normal circumstances. But, what he contends is that once the jurisdiction of the Income Tax Officer is challenged, then the disclosure of the materials to the court as well as to the assessee is necessary so that the question of jurisdiction of the Income Tax Officer could properly be considered by the court. If this contention of the learned counsel is accepted, then it will come to this. Those who have chosen to challenge the jurisdiction of the Income Tax Officer to issue the notice by filing a writ petition before the court, will be entitled to a disclosure of the materials forming the basis of the notices, and those who do not come before the court will not be so entitled. This will definitely be an anomaly. Merely because a person comes before the court, he cannot be said to have acquired a better right under the provisions of the Act than the one who has not chosen to come before the court. If that were to be the position, all assesseees against whom notices u/s 148 of the Act have been issued can rush to the court and seek a disclosure of the materials which formed the basis of the notices. It is true that a matter which comes before the court has to be decided judicially, and the parties before it should have an opportunity of knowing and meeting the case of the other. But, for the reasons set out above, we are not disposed to compel the disclosure of the materials to the petitioner in these cases and to hear it on those materials. If the disclosure is not permitted under the law as seen above, we are not able to see how the petitioner becomes entitled to the disclosure of the materials merely because he has challenged the jurisdiction of the Income Tax Officer. It is for the court to decide whether such a challenge is well founded or not. If, on going through the materials produced by the revenue before us, we are satisfied that there is reason to believe that income has escaped assessment by reason of the petitioner's non-disclosure of primary facts, we have to allow the proceedings to go on.

33. We, therefore, proceed to consider as to what are the fresh materials for entertaining a reasonable belief that the income has escaped assessment by reason of the petitioner's omission or failure to disclose fully or truly all materials for its reassessment for the years in question.

34. In these cases, among the various reasons given by the respondent, three are common to all the years. They relate to the question of genuineness of the trust. Of these three reasons one is based on a biography of Sri S. B. Adityan, the founder of the trust, written by one Sri Kurumbur Kuppuswami printed in the petitioner's press and published on April 1, 1969. In that book it has been stated that " Dina Thanthi " has been propagating the ideals of the " We Tamil " Party from its very inception, that it has been a spearhead for fighting for a separate Tamil State and that the credit for victory for Dravida Munnetra Kazhagam during the general elections in 1967 should be given to " Dina Thanthi ". According to

the revenue this publication showed prima facie that " Dina Thanthi " was a political newspaper carrying on active political propaganda on behalf of certain political parties even from its inception and that it has never been an organ of educated public opinion. But the question as to whether the newspaper had political leanings or whether it is an organ of educated public opinion had been gone into even at the original stage when the exemption had been granted, and the mere fact that the author of the biography had expressed his views that " Dina Thanthi" is a paper with political affiliation cannot form the basis for a re-enquiry on that question. As a matter of fact the assessing authority had before it some of the editorials in the various issues of the newspaper and the question whether the newspaper is an organ of the " We Tamil " party started by the founder of the trust was specifically gone into in the light of the observations in S.B. Adityan and Others Vs. First Income Tax Officer, Madras., . and on a consideration of the primary facts, a conclusion was reached by the concerned Income Tax Officer that the paper was an organ of educated public opinion. This is an inferential fact found on the materials produced by the assessee and other circumstances. If the Income Tax Officer had not drawn a proper inference from the primary facts placed before him, the petitioner cannot, on that ground, be said to be guilty of non-disclosure of the relevant basic and primary facts.

35. The second reason is based on certain extracts from the issues of " Dina Thanthi" showing, according to the revenue, that the paper is an yellow journal specialising in pandering to the base instincts of the public engaging in cheap sensational journalism by giving prominence to obscene and vulgar jokes, cartoons, film stars" photographs and their personal life. The respondent has stated that on the principles laid down in the decision of this court in S. B, Adityan v. First Income Tax Officer, the paper cannot be said to be organ of educated public opinion. Here again we find that the question whether the newspaper is an yellow journal was considered at the stage of the original assessments in the light of the said decision of this court. It is significant to note that the question of exemption came to be considered only in pursuance of and in accordance with the directions contained in the said decision. If the Income Tax Officer has not chosen to draw the proper inference that the paper is an yellow journal and not an organ of educated public opinion, it cannot be said that the escapement of income was due to the non-disclosure by the petitioner of the primary facts.

36. The third reason is based on a judgment of this court dated April 4, 1968, in Criminal Appeal No. 810 of 1965 arising out of certain prosecutions launched against three persons of whom one was a trustee of the petitioner-trust for misappropriation, breach of trust and making false entries in the accounts of the trust in pursuance of a criminal conspiracy between them. The accused in that case had raised a defence that amounts said to have been misappropriated had really been given to P.W. 7. the founder of the trust, for meeting his election expenses, that P.W. 7 was in the habit of taking funds from the trust for his personal purposes under false vouchers, and that the prosecution has been

motivated for the reason that the accused had made some disclosures before the Income Tax Officer which was detrimental to the interest of P.W. 7. This defence, the trial court rejected. It convicted the accused holding that the amounts in question had been misappropriated by them. On appeal by the accused, Venkataraman J. had stated:

" I am unable to agree with the learned Magistrate in the wholesale rejection of the arguments of the learned counsel for the appellants. On the materials available, it seems to me that there is some justification for the criticism of the learned counsel that the amounts were drawn by P.W. 7 from the " Daily Thanthi" trust on some vouchers, but spent for election purposes."

37. The learned judge has also observed that though the defence took out an application before the trial court for production of the account books of the trust for the preceding years to establish their case that amounts have been taken by P.W. 7 from the trust in the guise of loans to third parties, the account books had not been produced and that even when an opportunity was given at the stage of appeal the said account books were not forthcoming. While referring to an item of loan of Rs. 88,000 said to have been advanced to an allied concern " Sun Paper Mills " and returned by them, the court has stated :

" As rightly pointed out by the learned counsel for the appellant the accounts of Sun Paper Mills have not been produced either to show that the Sun Paper Mills borrowed this amount from the " Daily Thanthi". There is force in the criticism of the learned counsel for the appellants that, if really this amount was a loan to Sun Paper Mills, it would have been the easiest thing to give the loan in the shape of a crossed cheque. "

38. Dealing with another item of Rs. 55,349 said to be the total advances as per certain, list, it is stated :

" The list of persons to whom this amount is said to have been advanced was produced only at a later stage of the trial and even then it was only a bare copy without any signature. It is exhibit D-5. These circumstances lend support to the defence suggestion that this entry was made to cover up a shortage in the cash, because otherwise it is strange that on the closing day of the accounts advances of an odd amount of Rs. 55,349 were made to several persons and no voucher from those persons has been produced. Apart from the belated entry in the ledger under the heading " advances " the particular persons have not been debited with the amounts pertaining to them according to exhibit D-5." Lastly, the learned judge winds up by saying :

" To sum up, though there is support for the defence suggestion that P.W. 7 drew large sums of money for election purposes from the " Daily Thanthi" on vouchers which did not reflect the truth, so far as three amounts are concerned, the circumstances oblige the court to adopt the evidence of P.W. 7 that these amounts were not paid to him and he did not instruct the accused 1 to 3 to make false entries."

39. This judgment has been received from an informant by the Director of Inspection on October 25, 1968, and that was communicated to the department at Madras on October 30, 1968, long after the original assessments granting the exemption had been made to the petitioner-trust up to the assessment year 1967-68. According to the respondent the said observations made in the above judgment, *prima facie*, showed that the representations made by the petitioner at the stage of the original assessments about the borrowals from and repayments to various parties cannot be true and that the funds of the trust had been utilised for the personal benefit of the founder. The learned counsel for the petitioner, however, points out that the department was all along aware of the initiation of the criminal proceedings, the defence taken by the accused, the various exhibits filed in the case, some of which had been produced by the department itself on summons from court, and the judgment of the trial court even before the original assessments were made for all the years, and that the judgment cannot be said to contain new material which came to the department for the first time after the original assessments were made. This is met by the revenue by saying that though the department had the statements of the accused as also the judgment of the trial court before it, having regard to the fact that the trial court has disbelieved the defence of the accused in entirety, it merely ignored the statements of the accused as not representing the truth and that it is only the observations of Venkata-raman J. in the said criminal appeal that showed the statements made by the accused as to the dealings of P.W. 7, the founder of the trust, with its funds are true, and that the various statements and explanations given on behalf of the trust at the stage of the assessments cannot be true. As a matter of fact the learned counsel for the revenue states that the Income Tax Officer became aware of the true position only from the said judgment, and that it is only from the above judgment which has adversely commented on the conduct of the founder of the trust in his dealing with the funds of the trust, a *prima facie* belief came to be entertained by the Income Tax Officer that the trust cannot be genuine and that, in any event, the funds of the trust had been misapplied.

40. From the extracts of the judgment given above, it is clear that the court has made the said adverse remarks with reference to the conduct of the founder in dealing with two sums of Rs. 88,000 and Rs. 55,349. The learned judge has not expressed the view that the trust cannot be genuine on that account. Even if it is taken that the two sums belonging to the trust, alleged to have been drawn by the founder on February 19, 1962, and June 29, 1962, respectively, had been misapplied by him, it will not affect the genuineness of the trust which came into existence in the year 1954. It is well established that the subsequent acts and conduct of the founder of the trust cannot affect the trust if there has been already a complete dedication. *Krishnasami Pillai Vs. Kothandarama Naicken and Others*, , AIR 1938 73 (Privy Council) and *Gokuldoss Jamnadoss and Co. Vs. M. Lakshminarasimhalu Chetti and Others*, . If a valid and complete dedication had taken place, there would be no power left in the founder to revoke and no

assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. If the trust had been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust. Therefore, the subsequent conduct of the founder in dealing with the funds of the trust long after the creation of the trust may not put an end to the trust itself. There can, therefore, be no reason for doubting the genuineness of the trust. If at all, the two instances referred to in the judgment in the criminal appeal would indicate that some of the funds of the trust had been diverted not for the declared purposes. In such an event, only the amounts involved may be brought to charge on the ground that the amounts have not been applied to the objects of the trust.

41. We are, therefore, of the opinion that there are no materials which can form the basis or sustain the reason for reopening the question of genuineness of the trust in any of the years in question. The respondent has, therefore, no jurisdiction to reopen the question of the genuineness of the trust in any of the years in question. It is significant that the respondent has not proposed to reassess for the assessment years 1962-63 to 1964-65 and the question of the genuineness of the trust is not sought to be reopened in those years on the basis of these grounds.

42. The other reasons given by the respondent in respect of each of the assessment years relate to investments, utilisation and the alleged concealment of the income of the trust. It is seen that for some of the years large funds of the trust are said to have been invested in the allied concerns of the founder or his relations as well as to others without adequate security and that for some years it has been alleged that there has been lending of certain amounts outside the books of account of the trust. In some of the years large amounts are said to have been borrowed from the banks and from other sources not for the purpose of the business but for other extraneous purposes, and interest paid on such borrowings had been allowed as deductions. In some of the years 75% of the total income has been wrongly calculated while determining the question of exemption u/s 11 of the new Act. It is also stated that 75% of the income from the trust had not in fact been spent for charitable purposes as alleged. It is also alleged that there is discrepancy in the amounts received by the educational institution from the trust and those given by the trust to the institution as per its accounts. It is also seen that in two years some amounts are alleged to have been drawn by the founder of the trust for his election expenses. For the last two years the, petitioner had filed a revised return and the acceptance of the said return is said to be without proper investigation. In respect of some years, it is stated that there are large suppressions of sales of papers. It is also stated that from certain communications received from certain sources, " it appears that those persons (alleged creditors) are mere name-lenders and the transactions are bogus". The question is whether these materials relating to each of the years can form a proper basis for entertaining a reasonable belief that the income has

escaped assessment in that year by reason of the non-disclosure by the petitioner.

43. It prima facie appears to us that some of the reasons set out above almost amount to a change of opinion in respect of certain items and there can be no question of the non-disclosure by the assessee leading to the escapement of income in relation to those items. However, it is not necessary for us to see whether all the reasons set out for each year by the Income Tax Officer in his reports are tenable. If at least one of the grounds in respect of each of the years is such as to lead to a prima facie and reasonable belief that income has escaped assessment in that year by reason of the non-disclosure of the primary facts by the assessee, the jurisdiction of the Income Tax Officer to initiate reassessment proceedings u/s 147(a) cannot be successfully questioned. Therefore, we have to consider whether there exists at least one reason which would form the basis for the belief entertained by the Income Tax Officer with reference to each of the years.

44. For the year 1956-57 the following three grounds have been set out:

1. Investment of Rs. 4,77,493 in the allied concerns of the founder and/or his family which had no connection with the trust.
2. Rs. 25,000 utilised by the founder for his election expenses.
3. Suppression of sales of newspaper to the extent of Rs. 16,000.

45. As regards the first ground it is not alleged by the revenue that there was any suppression of materials by the assessee. The Income Tax Officer should have been aware of the investment even at the stage of original assessment. Even as regards the second all the materials on which this ground is based were there before the respondent at the stage of assessment. It may be that the judgment of this court in Cr. A. No. 810 of 1965 was rendered after the assessment. But that decision was given on materials which were already before the respondent and considered by him. If the respondent failed to draw the proper legal inference from the materials before him, the assessee is not to blame and if any escapement of income results thereby, that cannot be said to be due to the non-disclosure of materials by the assessee so as to attract Section 147(a). The third ground relates to the suppression of suppression of newspaper to the extent of Rs. 16,000 in the month of November, 1965, said to have been found out with reference to the figures furnished by the Audit Bureau of Circulation. Even if the said suppression is established, the escapement of income being less than Rs. 50,000 no notice could be issued u/s 148 by virtue of the prohibition contained in Section 149(a)(ii). Therefore, in respect of this year the proceedings u/s 147(a) cannot properly be invoked by the respondent.

46. In respect of the year 1957-58 one of the many reasons given is the suppression of sales of newspaper to the extent of Rs. 4 lakhs which is said to have been found out from the figures given by the Audit Bureau of Circulation.

Here, if the facts alleged are established, that will clearly attract Section 147(a).

47. For the year 1958-59 the reasons given are : (1) additional investment of Rs. 1,62,014 in shares at great risk to the trust; (2) deduction of interest of Rs. 60,722 on borrowing wrongly allowed; and (3) an amount of Rs. 1,44,000 of the trust fund has been utilised by the founder for his election purposes after making fictitious entries in the accounts of the trust. The materials in respect of all these items were before the Income Tax Officer at the stage of assessment. It is not alleged in these grounds that any material relevant to these items has been kept back by the assessee at that stage. Hence, there is no question of non-disclosure of primary facts by the assessee in this year so as to attract Section 147(a) of the Act.

48. For the year 1959-60 out of the many reasons given, one relates to the suppression of sales of newspaper to an extent of Rs. 53,552 as per the figures furnished by the Audit Bureau of Circulation and another relates to the lending of a sum of Rs. 10,000 to one Sankaralinga Iyer outside the books of the accounts of the trust. These grounds, if established, would come within the purview of Section 147(a).

49. For the year 1960-61 the three grounds set out are : (1) investment in allied concerns of the founder ; (2) deduction of interest of Rs. 51,931 on overdrafts wrongly allowed ; and (3) suppression of sales of newspaper to an extent of Rs. 11,479 said to have been found out on information furnished by the Audit Bureau of Circulation. All the materials in respect of the first two grounds were before the Income Tax Officer at the stage of the assessment and there is no fresh or new material now. It has not been alleged that the assessee suppressed any material in relation thereto. Therefore, there is no non-disclosure by the assessee in respect of the above two items. The third ground, even if proved, no notice could be issued u/s 148 in relation to that item alone in view of the prohibition contained in Section 149(1)(a)(ii). Section 147(a) cannot, therefore, be invoked in respect of this assessment year.

50. With reference to the assessment year 1961-62, the only two grounds set out are : (1) investments of the trust funds in allied concerns of the founder or his relations ; and (2) interest of Rs. 45,054 paid on borrowings, erroneously allowed as a deduction at the stage of original assessments. So far as the alleged investments in the alleged concerns are concerned, no details have been given and the allegation appears to proceed on the basis of the facts given for the earlier years. The assessing authority has not given any material to indicate that any investment has been made to allied concerns in the relevant year of account. The other ground relating to the improper deduction of interest paid on borrowings was not for the purpose of the trust. But the question of deduction was considered by the Income Tax Officer with reference to the account books and the various explanations given by the petitioner. The Income Tax Officer has not shown that the deduction came to be made because of any non-disclosure by the petitioner of any basic facts. The assessing officer could have gone into the

question whether the borrowing was for the purpose of the business of the petitioner with reference to the account books at the stage of the assessment, and it is not alleged that the account books did not reflect the truth about the utilisation of the amount borrowed. Therefore, any escapement of income during the said year cannot be attributed to the non-disclosure by the assessee, but to the failure of the Income Tax Officer to draw proper inference from the basic facts placed before him.

51. We are, therefore, of the view that in respect of this year Section 147(a) cannot properly be invoked and, therefore, the relevant notice u/s 148 should be held to be invalid.

52. In relation to the year 1965-66 apart from the general allegations that the funds of the trust have been lent to allied concerns and that the entire 75 per cent, of the total income has not been utilised for charitable objects, two of the specific grounds are that there has been a lending of trust funds outside the accounts in a sum of Rs. 1,16,500 to one Srinagar Buildings Society and that there is a discrepancy of Rs. 68,174 between the petitioner's accounts and the accounts of Adityanar Educational Institution on the amounts actually spent for purpose of education. If these grounds are established they would certainly attract Section 147(a).

53. For the year 1966-67, of the many grounds given, one relates to the discrepancy of Rs. 9,74,624 between the accounts of the petitioner-trust and those of Adityanar Educational Institution on the amounts spent for education and the other to a sum of Rs. 56,000 said to have been deposited by various depositors whose names are not given leading to the inference that the said sum should represent suppressed income. Here again, these grounds, if established, would be sufficient for invoking Section 147(a)

54. For the year 1967-68, among the various grounds set out, one ground is that there is a discrepancy of Rs. 4,46,327 in the amount spent for education between the account books maintained by the petitioner and those maintained by the Adityanar Educational Institution. This ground also, if established, would affect the question of the application of 75 per cent, of the total income to the charitable objects as contemplated in Section 11 of the Income Tax Act, 1961.

55. In the light of the above discussions on the various grounds set forth by the Income Tax Officer in his reports to the Commissioner as well as the Central Board of Revenue, and subject to what we have said on the question of jurisdiction of the respondent to reopen the question of the genuineness of the trust, we hold that the notices issued in respect of the assessment years 1957-58, 1959-60, 1965-66, 1966-67 and 1967-68 are not invalid. The notice issued for reopening the assessment for the year 1956-57, 1958-59, 1960-61 and 1961-62 are, however, bad for the reasons set out above.

56. The result is all the Writ Petitions Nos. 3353, 3355 and 1557 to 1559 of 1969 are dismissed. Writ Petitions Nos. 3352, 3354, 3356 and 3357 of 1969 are

allowed and the rule nisi in these cases are made absolute. There will, however, be no order as to costs.