(1988) 11 MAD CK 0011

In the Madras High Court

Case No : Writ Appeal No''s. 539 and 540 of 1981 and 1828 of 1987 and Writ Petition No''s. 1222 of 1979, 1742 of 1980 and 2297 of 1981

Thanthi Trust APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 22-11-1988

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 12A, 132(5), 139, 142, 143(2)

Citation : (1989) 75 CTR 1 : (1989) 177 ITR 307

Hon'ble Judges : S. Mohan, J;Padmini Jesudurai, J

Bench : Division Bench

Advocate : Debi Pal, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Mohan, J.—All these matters raise one and the same question of law. Therefore, we propose to deal with them under a common judgment.

2. The facts leading to the writ appeals are as follows: The appellant is a trust know as Thanthi Trust. This was created under an instrument of

declaration of trust dated March 1, 1954. The purpose of the trust was to found Daily Thanthi Newspaper as an organ of educated public opinion

for the Tamil reading public to disseminate news and ventilate opinions on all matters of public interest through the said newspaper. The appellant

trust is an assessee on the file of the respondent. Its permanent account number is P.A. No. 47,005-AZ-5117. The trust had been claiming

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. Though there

were several proceedings in relation to the claim for exemption, ultimately, the Income Tax Officer upheld the appellant''s claim for exemption for the assessment years 1955-56 to 1961-62. After the coming into force of the Income Tax Act, 1961, exemption was gain claimed by the

appellant u/s 11 of this Act on the basis of the original trust deed. The claim for exemption was upheld by the concerned Income Tax Officer for

the year 1962-63 to 1967-68. For the assessment year 1968-69, the Income Tax Officer issued a notice u/s 143(2) of the Act calling upon the

appellant to produce its books of account relevant to the assessment year and also for the earlier years. This necessitated the appellant to file Writ

Petition No.611 of 1969 contending that the said notice was without jurisdiction. During the pendency of this writ petition, the Income Tax Officer

issued notices dated May 23, 1969, to the petitioner u/s 148 of the Income Tax Act, 1961 (for short ""the Act""). It was proposed to reopen the

assessment for the earlier assessment years 1965-66 to 1967-68. It was stated that the officer has reason to believe that there has been

escarpment of income chargeable to tax for the relevant assessment years. The appellant filed Writ Petitions Nos. 1557 to 1559 of 1969

questioning the validity of the said no ices issued u/s 148 of the Act. Later, the Income Tax Officer, Special Investigation Circle issued similar

notices to the appellant u/s 148 of the Act proposing to reassess the income for the assessment years 1956-57 to 1961-62. Thereupon, the

appellant filed Writ Petitions Nos. 3352 to 3357 of 1969 raising the same grounds as were urged in Writ Petitions Nos, 1557 to 1559 of 1969.

This court by order dated December 21, 1972, disposed of the writ petition holding that the reopening of the assessments for the assessment years

1956-57. 1958-59, 1960-61 and 1962-62 was not valid. However, the reopening of the assessments for the assessment years 1957-58, 1959-

60, 1965-66, 1966-67 and 1967-68 was valid. The assessments in respect of the other years are pending at various stages.

3. It is at this stage that the Income Tax Officer issued two notices dated November 17, 1978, u/s 148 of the Act proposing to reopen the

assessment for the assessment years 1969-70 and 1973-74. The appellant was called upon to file a return and produce all the documents and the

necessary accounts. The validity of these notices was challenged in the writ petitions.

4. Before the learned single judge (Ramanujam J), it was argued that because there was no efficacious remedy under the Act, resort had to be had

under article 226 of the Constitution of India. It was further urged that the mere change of opinion will not enable the issue of notices u/s 148(2) of

the Act. The statutory provisions have not been properly complied with. The assessments for the years 1969-70 and 1973-74 are still pending in

appeal before the Tribunal. Therefore, the question of reopening the assessment does not arise. The object of issue of notices was to have a roving

enquiry which is not permissible in law.

5. The learned judge, on going through the notices, held that it was purported to be u/s 143(2) of the Act. It merely called upon the appellant-

petitioner before him to produce certain account books in connection with the assessment year 1969-70. Actually, the notice u/s 148 of the Act

was issued on March 4, 1978. The petitioner before him had kept quiet on all these days. Therefore, he cannot challenge the consequential notice.

In this view, the notice issued for the assessment year 1969-70. Which was impugned in Writ Petition No. 10840 of 1981, could not be

challenged. The pendency of the appeal would be a bar to the reopening of the assessment. In this view, the learned single judge dismissed both

the writ petitions (Writ Petitions Nos. 10480 of 1981).

6. Writ Appeal No. 539 of 1981 is directed against Writ Petition No. 10480 of 1981, while Writ Appeal No. 540 of 1981 is directed against

Writ Petition No. 10841 of 1981.

7. To continue the narration of facts, it has already been continued that the deed of declaration of trust was made on March 1, 1954. A

supplementary deed was executed by the donor on June 28, 1961, directing that the surplus income of the trust should be utilised only for

educational purposes. The appellant filed C.S. No. 90 of 1961 by way of originating summons in the High Court. The High Court held that the

trustees were bound by the supplementary deed and, therefore, the entire income had to be spent for the purposes mentioned in the supplementary

deed. On March 17, 1969, after the transfer of file from the Third Income Tax Officer, City Circle-II, to the Income Tax Officer, Special

Investigation Circle, notices were issued u/s 143(2) of the Act to produce the books of account. Accordingly, the account books were produced

for the assessment years 1965-66 to 1967-68. As noticed above, writ petitions have been filed for the years 1956-57 and 1961-62 as well as for the years 1965-66 to 1967-68. As seen above, the reopening of assessments for the assessment years 1956-57, 1958-59, 1960-61 and 1961-

62 came to be quashed. However, the proposal to reassess was upheld in respect of the years 1957-58, 1959-60, 1965-66, 1966-67 and 1967-

68. This was by order dated December 21, 1972, to which we had made reference earlier. In the said order. It was noticed that in respect of the

assessment year 1957-58, one of the main reasons given is the suppression of sales of newspaper to the extent of Rs. 4,00,000 which is stated to

have been discovered from the figures given by the Audit Bureau of Circulation. Therefore, the notice u/s 147(a) of the Act for the said assessment

year was upheld. Likewise for 1958-60. The said judgment is reported in Thanthi Trust Vs. Income Tax Officer, .

8. From September 3, 1976, to September 13, 1976, there was a search of the appellant''s business premises and the officers seized the books of

account. On November 4, 1976, action u/s 132(5) was dropped though there was no specific order to that effect. Notices dated March 5, 1979,

and March 15, 1980, came to be issued u/s 148 of the Act for reopening the assessment for the years 1970-71 and 1971-72. Concerning these

two years, the appeals are stated to be pending. The appellant filed a writ petition in the Delhi High Court. By judgment dated March 23, 1987,

the High Court directed the Income Tax authorities to return the seized books of account and documents within a week from the date of receipt of

the said judgment. It was further directed that since the books of account and the documents have been seized by the Income Tax authorities, the

appellant-petitioner before that court was unable to file the requisite return as required u/s 12A read with section 139 of the Act. Hence, one

year''s, time was granted to file the return, the one year period reckoned from the date the books of account and the documents seized were

returned. This judgment is reported in Jameson and Magrudar Co. Pvt. Ltd. Vs. Income Tax Officer and Others, .

9. We will now set out the tabular statement as to the subject-matter of the writ petitions:

Assessment Completion of Reopening Proceedings year original notice No.

assessment

1969-70 19-4-1972 4-3-1978 W.A. 539 of 1981

against

W.P. 10840 of 1981

1970-71 28-3-1973 5-3-1979 W.P. 1222 of 1979

1971-72 26-2-1975 13-3-1980 W.P. 1742 of 1980

1972-73 27-3-1975 24-3-1981 W.A. 1828 of 1987

against

W.P. 2297 of 1982

1973-74 31-12-1975 4-3-1978 W.A. 540 of 1981

against

W.P. 10841 of 1981

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10. It is under these circumstances that the writ petitions have been filed. The prayers in Writ Petitions No. 1222 of 1979, 1742 of 1980 and 2297

of 1981 are identical, viz., for the issue of a writ of prohibition. As for as Writ Appeals Nos. 539 and 540 of 1981 are concerned, the prayer in

the Writ Petitions Nos. 10840 and 10841 of 1981 is for the issue of a mandamus restraining the respondent from proceeding with the notices

dated November 17, 1981, calling upon the petitioner earlier to file returns of income for the assessment years 1969-70 and 1973-74,

respectively, and from making any reassessment.

11. In all these writ petitions, the stand taken is that is not a case in which section 147(a) could be invoked because there was no fault on the part

of the assessee to file a true and full return. By reason of subsequent information, if something comes to the knowledge of the authority, the proper

section will be section 147(b). These safeguards are vital in character and they cannot be lightly default with. The issue of notice a colourable

exercise of power. The object of the notice is nothing but to have a roving enquiry.

12. In the counter-affidavits, the stand taken is uniform, in that, by reason of the search conducted in the business premises of the appellant certain

incrementing materials were found on the basis of which it came to light that the return filed was not true and full. Therefore, where there is an

escapement and the failure to return the income came to be established on the persual of the ABC newsprint stock register, certainly, the authority

is well within its jurisdiction to invoke section 147(a) of the Act. It is incorrect to contend that there is any colourable exercise of power. Nor again

could it be urged that the object is to conduct a roving enquiry. In any event, when there are adequate remedies available under the Act, there is no

justification for the petitioner to resort to the writ jurisdiction of this court under article 226 of the Constitution of India.

13. Dr. Debi Pal, after taking us through the chronology of events, draws our attention to section 147 of the Act. It is his submission that the power

under the said section could be exercised subject to section 148(2). Section 148(2) requires recording of reasons. Where the proposed notice is

beyond four years, the Commissioner must satisfied, and that satisfaction must be recorded for reaching his conclusion. For 1969-70, the

argument, of learned counsel runs as follows: If at the time of the original assessment, the assessing authority had knowledge of the stock register,

this reason cannot be held to be valid. It is clear in this case, the reconciliation statement was filed. In fact, ABC newsprint stock register was in the

full knowledge of the assessing authority. The assessing authority did not require the appellant to produce the register. If, subsequently the

Department by reason of the alleged information gathered during the search, formed any belief that any income is stated to have escaped, such

escapement of the income, even if there be any such escapement, is in consequence of the information which information was acquired subsequent

to the completion of the assessment. Therefore, section 147(a) cannot be invoked. In support of this submission, he cites the decision in Income

Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, . That was a case where the loans were held to be fictitious and not

genuine. It was held that the assessee had produced all the relevant accounts and documents. Therefore, the escapement is not due to the omission on the part of the assessee to file a return truly and fully. The ratio of that judgment will squarely apply to this case. To similar effect is the decision

in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., . In Commissioner of Income Tax/ Wealth-Tax/ Gift-Tax Madras Vs.

M.P.R. Periak Aruppan Chettiar Commissioner Of Wealth-Tax, Madras V.M.RM. Ramaswami Chettiar, , it was held that where the loans had

been taken under hundies in the bogus names, the assessee is not bound to oblige the Income Tax Department by informing that they are bogus.

There is enough compliance with law if they have been shown in the return.

14. In the case on hand, the counter-affidavit definitely takes the stand that it has become necessary to investigate the case in depth in order to

bring to tax the income secreted from the books. Certainly this is not the purpose for which section 147 is intended because the grounds for issue

of notice u/s 147(a) must have a live link or close nexus. It has been so laid down in Income tax Officer, Calcutta and Others Vs. Lakhmani

Mewal Das, , again in Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, , where excess administrative expenses were claimed

at 40% and later it turned out to be bogus, namely, 10%, the Income Tax Officer having allowed the excess claim at 40% cannot, on the basis of

the subsequent information, hold that the earlier assessment was wrong. This is because the expenses relating to administrative changes, though

claimed at a higher figure, was all the while within the knowledge of the assessing authority.

15. In the same way, in Ganga Saran and Sons P. Ltd., v. ITO [1982] 130 ITR 1 , where remuneration was paid to the manger and a sizable

portion towards remuneration was siphoned off as gift and it was held to be a subterfuge, nevertheless section 147(a) would not apply since that

came to the knowledge of the assessing authority by means of subsequent information. In the light of the case law, if the notices are analysed, it will

be clear that the very basis of reopening was the subsequent information. If. Under law, the assessee cannot delve into the mind of the Income Tax

authorities and so long as the return filed is true and full, merely because there is is escapement, section 147(a) cannot be invoked.

16. As a matter of fact, after the return came to be filed, if any further information was required, the assessee could have been called upon either

u/s 143(2) or even thereafter to give particulars u/s 142. That is the scheme underlying these provisions. This has been succinctly pointed out in

Modi Spinning and Weaving Mills Vs. Income Tax Officer, . The same ratio has been adopted by the Madhya Pradesh High Court also as seen

from Smt. Kanchanbai Vs. Commissioner of Income Tax, . Therefore, the submission is that there was no obligation on the part of the appellant to

produce the stock register as the figures of the Audit Bureau of Circulation were known to the assessing authority at the time of the original

assessment. The decision in Thanthi Trust Vs. Income Tax Officer, makes it very clear, yet another case that was cited in this behalf was Gemini

Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others, , where the amounts received by drafts were not disclosed. From this, it

will be clear that it is not in every case if there is an escapement, straightway section 147 could be invoked. What is important to be noted is,

whether it is on account of the failure to disclose or on account of subsequent information. If it is the latter, certainly, it is not open to the authority

in invoke section 147(a). If, in the light of the case law, the notices are analysed, they do not answer the test and the omission cannot, by any

stretch of imagination, be held to be attributable to the appellant.

17. For the assessment year 1970-71, the reasoning in relation to discovery of promissory notes cannot be used for invoking section 147 because

they are time-barred promissory notes. Looked at from this point of view there is no rational nexus.

18. The suspense registers were produced for 1971-72. Even if excessive commission was paid to relations, it would not matter unless it had been

siphoned off by the trust. That is not the case of the Department. For the assessment year 1972-73 and 1973-74, the same grounds are urged. It

is not the concern of the appellant as to what inference of facts or law the authority has to make, any subsequent information will fall u/s 147(b) and

not u/s 147(a). Therefore, this is a clear case in which the notices which do not spell out the grounds which have a live link or rational nexus for

reopening u/s 147 of the Act are sought to be used against the appellant-the writ petitioner in the other cases. If such notices are without

jurisdiction, prohibition should issue.

19. Mrs. Nalini Chidambaram, learned standing counsel for the Department,

refers to the judgment of Ramanujam J., rendered in Writ Petition

No. 10840 of 1981 and submits that in so far as what came to be challenged were notices u/s 142 and not u/s 147(a), that reasoning will hold

good.

20. In cannot be claimed as of right that in every case where notices u/s 147 are challenged. The appellant would be entitled to know the

reasoning. Law does not cast an obligation on the Department to provide the appellant with the reasoning. The Department is obliged to produce

the concerned file before the court so that the court can satisfy itself whether the reasons recorded are germane. As a matter of fact, in case of this

kind, all that the court is required to see is (1) whether there is a prima facie case for reopening the assessment; (2) whether there are materials.

But that does not mean that the adequacy of the materials can be gone into; and (3) whether there had been any arbitrary exercise of power or

whether there any extraneous matters taken into consideration.

21. Then again, it is settled law that even if one of the reasons is good out of the several reasons stated for reopening, the notice has to be upheld.

Therefore, it is submitted that it is not open to the appellant''s counsel to comment upon the reasons which the court alone can scrutinize. In other

words, article 226 cannot be utilised to find out the correctness of the reasoning. There are adequate remedies available. Hence, the remedy of the

writ petitioner is misconceived. In support of this argument, learned counsel cites K. Mohammed Hussain, Receiver of Estate of M.D.T.

Kumaraswami Mudaliar Vs. Commissioner of Income Tax and Another, , VXL India Ltd. Vs. Income Tax Officer and Others, , Commissioner of

Income Tax, Gujarat Vs. A. Raman and Company, . Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer,

Rajahmundry, and Commissioner of Income Tax Vs. Mahalakshmi Textiles Mills Ltd., .

22. Merely because there was subsequent information, it does not mean that section 147(a) ceases to apply. It has been so held in Commissioner

of Income Tax Vs. Mahalakshmi Textiles Mills Ltd., . Again, in Jameson and Magrudar Co. Pvt. Ltd. Vs. Income Tax Officer and Others, , it has

been ruled that if our of the several grounds seeking to reopen an assessment, one ground is good, the notice has to be upheld. In Kantamani

Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, , it has been held that in view of the subsequent disclosure

when it came to light that large accretions had not been disclosed when it came to light that large accretions had not been disclosed in the original

return, that was enough to reopen the assessment. The decision in D.L.F. Housing and Construction Pvt. Ltd. Vs. Union of India and another,

(Delhi, is an authority for the proposition that if there has not been full disclosure, section 147(a) of the Act could be invoked. In any even, the

notice in relation to the assessment year 1973-74 is well within four years. There is no ground at all for the appellant to approach this court. In a

case even where there is no prima facie ground, the appellant was relegated to the assessing authority, as seen from the decision in R.L. Traders

Vs. Union of India, . In fine, therefore, it is submitted that there is no lack of jurisdiction; that there has been escapement of assessment is clear;

that such an escapement is due to the non-disclosure and that at this stage of mere proposal to reassess, there is no justification for interference.

23. Dr. Debi Pal in his reply would submit that the decision Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, , can have no

application to the facts of the present case, because that was a case u/s 147(b). In that case, the reason that it was a substitute was not accepted

by the Supreme Court. In all the rulings of the Supreme Court which had been cited by learned counsel for the appellant, the court had examined

the reason whether there was a live or a close nexus. Therefore, the reason can be examined only for the purpose of finding this out. The same

principle was adopted in Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, . In Thanthi Trust Vs.

Income Tax Officer, , for four years, notices were issued. If the jurisdiction of the authority to invoke section 147 is challenged, the reasons will

have to be disclosed as laid down in Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others, , Madhya Pradesh Industries

Ltd. Vs. The Income Tax Officer, Nagpur, and Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, . The reason why

the appellant did not choose to cite various High Court decisions is that the law has been clearly laid down by the Supreme Court. In

Commissioner of Income Tax, Tamil Nadu Vs. Standard Motor Products of India Ltd., , it is categorically laid down that if there is a Supreme

Court decision on a point, there is no necessity to follow the High Court.

24. Citing Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle ''B'', Nagpur, , it is urged that the notices for the

assessment years 1969-70 and 1973-74 have not been challenged as wrong. The prayer itself is one for prohibition. Therefore, there cannot be

any delay. Even if there were any delay, that cannot be against the appellant. The authorities in this regard are P.C. Doshi and Another Vs. 7th

Income Tax Officer, C-I Ward, Bombay, and Srimati Suniti Devi Jaipuria Vs. Income Tax Officer, ""A"" Ward and Others, . Further, if there is lack

of jurisdiction, no question of delay would arise as laid down in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District,

I and Another, . In P.C. Doshi and Another Vs. 7th Income Tax Officer, C-I Ward, Bombay, , the delay of four years was held not to matter.

Lastly, it is submitted that materials were available to the assessing authority at the time of assessment and hence section 147(a) could not be

invoked.

25. Having regard to the above submissions, the following questions emerge for our consideration:

(1) What is the law in relation to invocation of power. u/s 147(a) of the Act ?

(2) Whether the reason given in the notices could be held to be tenable ?

(3) Whether the writ petitions are maintainable ?

(4) Whether there is delay ?

Section 147 of the Income Tax Act, 1961, confers jurisdiction to reopen the escaped assessment under two contingencies. The provision with

regard to issue of notice is contained in section 148. But before the issue of notice, reasons will have to be recorded. The time-limit for the issue of

such a notice is provided u/s 149 of the Act. In cases falling under clause (a) of section 147, eight years should not have elapsed from the end of

the relevant assessment year. However, if it is more than Rs. 50,000 then sixteen years. In cases falling under clause (b), four years is the limitation

reckoned from the end of the relevant assessment year.

26. It requires to be carefully noted that this section is subject to section 151 of the Act. In cases after the expiry of eight years, the satisfaction

must be that of the Board. Where it is after the expiry of four years, it is the satisfaction of the commissioner. Here again, it has to be on reasons

recorded. It is in this background that the relevant case law will have to be seen to ascertain when exactly the assessee failed within the meaning of

section 147(a) of the Act. This becomes material because there is a vital difference between cases falling u/s 147(a) and section 147(b). u/s

147(a), the jurisdiction is conferred when the assessee commits default. But section 147(b) relates to a case where notwithstanding there being no

default, if some subsequent information comes to the knowledge of the authorities, the escapement of assessment can be brought to book. The

case law is uniform in that the statutory safeguards are not to be viewed lightly.

27. It has been held in ITO v. Madnani Engineering Works Ltd. [1978] 118 ITR 1 (headnote) thus:

In the original assessment of the respondent for the assessment year 1959-60 completed on August 23, 1960, certain interest paid by it to

creditors from which it claimed to have borrowed monies on hundis was allowed as deductible expenditure. Subsequently on January 25, 1968,

i.e., after a lapse of four years from the end of the assessment year, a notice was issued by the Income Tax Officer to reopen the assessment of the

respondent on the ground that the transactions of loan represented by the hundis were bogus and no interest was paid by the respondent to any of

the creditors and interest was wrongly allowed. The respondent challenged the validity of the notice by filing a writ petition in the High Court. On

December 5, 1968, the Income Tax Officer in his counter-affidavit declined to disclose the facts on the ground that if such facts were disclosed, it

would cause great prejudice to the interests of the Revenue and would frustrate the object of reopening the assessment. Thereafter, he filed a

further affidavit on January 27, 1970, stating that in the course of the assessment of the respondent for the assessment year 1963-64 it was

discovered that various items shown as loans against the security of hundis in the respondent''s books of account for the assessment year 1959-60

were in fact fictitious and credits against the names of certain persons, viz., A.G. R, M and D, were found not to be genuine, and that in that

premise it appeared to the Income Tax Officer that the respondent had failed to disclose fully and truly all material facts necessary for its

assessment and by reason of such failure a portion of its income had escaped assessment. A single judge of the High Court dismissed the writ

petition, but on appeal a Division bench of the High Court allowed the petition and quashed the notice. On appeal to the Supreme Court:

Held, affirming the Division Bench of the High Court, (i) the stand taken by the Income Tax Officer in his first affidavit dated December 5, 1968,

was obviously untenable because the existence of reason to believe on the part of the Income Tax Officer was a justiciable issued and it was for

the court to be satisfied whether in fact the Income Tax Officer had reason to believe that income had escaped assessment by reason of failure of

the respondent to make a full and true disclosure.

(ii) That the respondent had produced in the original assessment proceedings all hundis on the strength of which it had obtained loans from

creditors as also entries in the books of account showing payment of interest and it was for the Income Tax Officer to investigate and determine

whether these documents were genuine or not; the respondent could not be said to have failed to awake a true and full disclosure of the material

facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced by it were bogus.

The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., , applied.

(iii) That, as the Income Tax Officer had in the second affidavit merely stated his belief but not set out any material on the basis of which he had

arrived at such belief, there was nothing on the basis of which court could be satisfied on the affidavit that he had reason to believe that a part of

the income of the respondent had escaped assessment by reason of its failure to make a true and full disclosure of the material facts.

(iv) That, therefore, the notice of reassessment was void.

28. The point to be noted as far as this decision is concerned is that the respondent-assessee has produced the relevant materials because it was

stated at page 5 thus:

It will thus be seen that according to this judgment, there was no obligation on the assessee to disclose that the partnership agreement produced

by it was bogus and that the entries made by it in its books of account were false. The assessee discharged the obligation which lay upon it by

disclosing its books of account and evidence from which material facts could be discovered and it was for the Income Tax Officer to decide whether the documents produced by the assessee were genuine or false. Here also the respondent produced all the hundis on the strength of which

it had obtained loans from creditors as also entries in the books of account showing payment of interest and it was for the Income Tax Officer to

investigate and determine whether these documents were genuine or not. The respondent could not be said to have failed to make a true and full

disclosure of the material facts by not confessing before the Income Tax Officer that the hundis and the entries in the books of account produced

by it were bogus, we do not see any distinction at all between The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., and the

present one and the language of section 147(a) being identical with that of section 34(1)(a), the ratio of the decision in Burlop Dealers, case must

govern the decision of the present case. We must, therefore, hold that there was no failure on the part of the respondent to disclose fully and truly

all material facts necessary for it assessment and the conditions for the applicability of section 147(a) was not satisfied.

29. The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., , which was relied on, is a case wherein it was held that where a wrong

inference was made at the original assessment, the assessee was not obliged to inform the officer of probable inference that may be raised on facts

disclosed. It was further held (headnote):

The respondent had disclosed its books of account and evidence from which material facts could be discovered: it was under no obligation to

inform the Income Tax Officer about the possible inference that might be raised against it. It was for the officer to raise such an inference and if he

had not done so in the original assessment, the income that escaped assessment could not be brought to tax u/s 34(1)(a).

30. This case dealt with the corresponding provision under the old Act. At page 612 of the above decision, it was held:

We are of the view that u/s 34(1)(a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the

Income Tax Officer about the inference which the Income Tax Officer may raise from those facts. The terms of the Explanation to section 34(1)

also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of section 34(1), but where, on the evidence and

the materials produced, the Income Tax Officer could have reached a conclusion other than the one which he has reached, a proceeding u/s 34(1)

(a) will not lie merely on the ground that the Income Tax Officer has raised an inference which he may later regard as erroneous.

31. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , it was held at page 448 thus:

As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief.

Rational connection postulates that there must be a direct nexus or live-link between the material coming to the notice of the Income Tax Officer

and the formation of has belief that there has been escapement of the income of the assessee from assessment in the particular year because of his

failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and

substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment. At

the same time as have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched,

which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words

''definite information'' which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of

the Act of 1961, would not lead to the conclusion that action can now be taken for reopening an assessment even if the information ins wholly

vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretense.

The powers of the Income Tax Officer to reopen an assessment, though wide, are not plenary. The words of the statute are ''reason to believe''

and not ''reason to suspect''. The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt contemplates

the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is

that instance of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be,

subject to right of appeal and revision, finally about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before

such action it taken. The requirements of the law should be satisfied. The live link or close nexus which should be there between the material before

the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from

assessment because of the latter''s failure or omission to disclose fully and truly all material facts was missing in the case.

32. The headnote in Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, is sufficient for our purpose:

There must be materials to come to the conclusion that there was ''omission or failure to disclose fully and truly all material facts necessary for the

assessment of the year''. This postulates a duty on every assessee to disclose fully and truly all material facts necessary for the assessment.

Therefore, the obligation is to disclose facts; secondly. Those facts should be material; thirdly, the disclosure must be full and, fourthly, true. What

facts are material and necessary for assessment will differ from case to case. In every assessment proceedings, for computing or determining the

proper tax due from the assessee, it is necessary to know all the facts which held the assessing authority in coming to the correct conclusion. From

the primary facts in his possession whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise,

the assessing authority has to draw inference as to certain other facts. But, on the primary facts, it is for the taxing authority to draw inferences; it is

not necessary for the assessee to draw inferences for him.

33. In Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, , it requires to be noted that the original business was carried on at

Delhi by one Deo Dutt Sharma. The same was taken over by the assessee-company. The said Deo Dutt Sharma was appointed as director to

manage the Delhi business. In the original assessment, the salary, commission and bonus paid to Deo Dutt Sharma were allowed to be deducted.

When it was proposed to reassess the same as escaped turnover u/s 147(a) because Deo Dutta Sharma had given substantial amounts as loans to the managing director and gifts to his near relatives and drew only smaller amounts to himself, it was held at page 11 as follows:

It is well-settled as a result of several decision of this court that two distinct conditions must be satisfied before the Income Tax Officer can

assume jurisdiction to issue notice u/s 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and,

secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully

and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer

would be without jurisdiction. The important words u/s 147(a) are ''has reason to believe'' and these words are stronger than the words ''is

satisfied'', the belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be

based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which

have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a

bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). If there is no rational and

intelligible nexus between the reasons and the belief, so that, on such reasons no one properly instructed on facts and law could reasonably

entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income

of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully

and truly all material facts. And the notice issued by him would be liable to be struck down as valid"".

34. On this reasoning it was further held at page 13 thus:

We may point out that, in fact, the statements of account of Deo Dutt Sharma with the assessee for the relevant accounting year as also the

previous years were with the Income Tax Officer at the time of the original assessment and these statements of accounts clearly showed that out of

the amount of remuneration credited to his account, he had made a gift of Rs. 12,550 to the son of Ganga Saran Sharma on July 31, 1957, and given a loan of Rs. 2,25,000 to Ganga Saran Sharma on August 25, 1958, and the Income Tax Officer was fully aware that Ganga Saran Sharma

was the managing director of the assessee. It is possible, and we may assume it in favour of the Revenue, that the subsequent gifts made by Deo

Dutt Sharma to the wife and daughters-in-law of Ganga Saran Sharma were not disclosed to the Income Tax Officer at the time of the original

assessment, but these gifts being subsequent to the relevant accounting year, the assessee was not bound to disclose the same to the Income Tax

Officer. Moreover, it is difficult to appreciate how the assessee could be said to be under an obligation to disclose to the Income Tax Officer in the

course of its assessment as to how a director who was in sole charge of the management of the business of the assessee and who was being paid

remuneration for the services rendered by him to the assessee, had utilised the amount of remuneration received by him. We do not think it

possible to sustain the conclusion that the assessee omitted or failed to disclose fully and truly and material facts relating to its assessment.

35. In the decision in Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others, , it is held (headnote):

In proceedings for the original assessment of the appellant firm though the appellant did not disclose certain transactions evidenced by certain

drafts, the officer himself discovered the facts relating thereto but by oversight did not bring the amounts represented by the drafts to tax as the

income of the appellant. Subsequently, the Income Tax Officer issued a notice u/s 147(a) of the Income Tax Act, 1961, with a view to assessee

the amounts as the appellant''s the High Court held that the Income Tax Officer did not apply his mind to the question whether the amounts could

be treated as part of the total income of the appellant and as the appellant did not disclose the source of those amounts which were not recorded in

the account books, all the conditions for invoking the jurisdiction u/s 147(a) were present. On appeal to the Supreme Court:

Held, reversing the decision of the High Court, that after discovery of the primary facts relating to the transactions evidenced by the drafts, it was

for the officer to make the necessary enquiries and draw proper inference as to whether the amounts represented by the drafts could be treated as

part of the total income of the appellant. This the officer did not do. It was plainly a case of oversight and it could not be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the appellant to disclose fully and truly all material

facts. He could not, thereafter, taken recourse to section 147(a) to remedy the error resulting from his own oversight.

36. These cases cited on behalf of the appellant made two thing clear. (1) For invocation of jurisdiction u/s 147(a) of the Act, the escapement must

be because of the omission on the part of the appellant. (2) The reasons to be recorded must have a live link or a close nexus.

37. As against this, the Revenue cited before us the following cases to contend that under writ jurisdiction, it is neither feasible nor desirable to go

into the correctness of the reasoning or the sufficiency thereof so long as there is a prima facie case to reopen. In K. Mohammed Hussain,

Receiver of Estate of M.D.T. Kumaraswami Mudaliar Vs. Commissioner of Income Tax and Another, , where one of us, sitting in the Bench with

Ramanujam J., held at page 867 as follows:

The petitioner''s contention that Kumaraswami Mudaliar before his death and later the receiver had disclosed all necessary and material particulars

for deciding the question of status and that the assessing authority had no power to go back on his earlier assessment on the question of status,

involves investigation of facts as to what were the materials that were produced before the Income Tax Officer at the first instance when the

assessment was first made in the status of an individual. Further, the petitioner has come to this court even at the stage of issue of a notice and

before the actual proceedings are taken, it is always open to the petitioner to put forward his objections and convince the second respondent who

issued the notice u/s 147 of the Income Tax Act that there is no room for making a revised assessment as proposed by him and that he, having

decided earlier the status, cannot change his opinion and make a revised assessment on the estate of Kumaraswami Mudaliar in the status of a

Hindu divided family.

We have to, therefore, hold that this writ petition is premature. Further, the matter involves investigation of facts. The proper thing for the petitioner

is to go before the second respondent and put forward his objections and if ultimately and adverse orders are passed against him by the second

respondent, he can challenge that order in appropriate proceedings.

38. In the decision in VXL India Ltd. Vs. Income Tax Officer and Others, it is held (headnote):

Whether there is any material or information in the possession of the Income Tax Officer which is sufficient to invoke the provisions of section 147

of the Income Tax Act, 1961, viz., whether income chargeable to tax has escaped assessment, has to be decided under the provisions of the Act

itself and not by way of a writ petition under article 226 of the Constitution, it has to be decide dint the assessment proceedings after considering

the objections raised by the assessee before the Income Tax Officer, the appellate or other authorities.

In the instant case, the writ petition was dismissed with liberty to the appellant to raise all questions that were open to it under law before the

assessing authorities, including the question of jurisdiction or of the condition precedent for invoking the provisions of section 147.

39. In Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, , in dealing with the meaning of the expression information u/s 147(b)

of the Act, it was held that the High Court in exercise of its jurisdiction under article 226, has power to set aside a notice u/s 147(b) if the condition

precedent to the exercise of the jurisdiction does not exist. The court may, in exercise of its powers, ascertain whether the Income Tax Officer had

in his possession any information; the court may also determine whether from the information the Income Tax Officer may have reason to believe

that income chargeable to tax has escaped assessment. But the jurisdiction of the court extends no further. Whether on the information in his

possession he should commence proceedings for assessment or reassessment, must be decided by the Income Tax Officer and not by the High

Court. The Income Tax Officer alone is entrusted with the power to administer the Act; if he has information from which it may be said, prima

facie, that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court exercising powers

under article 226 of the Constitution to set aside or vacate the notice for reassessment on a reappraisal of the evidence.

40. In this case, it requires to be carefully noted by us that the jurisdiction of the High Court had not been completely excluded. In Kantamani

Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, , it was held by the Supreme Court thus (headnote):

In proceedings under article 226 of the Constitution of India challenging the jurisdiction of the Income Tax Officer to issue a notice u/s 34(1)(a),

the High Court is only concerned to decide whether the conditions which invested the Income Tax Officer with power to reopen the assessment

did exist: it is not within the province of the High Court to record a final decision about the failure to disclose fully and truly all material facts bearing

on the assessment and consequent escapement of income from assessment and tax.

41. In Commissioner of Income Tax Vs. Mahalakshmi Textiles Mills Ltd., , it has been held:

These decisions indicate that if the materials coming to the knowledge of the Income Tax Officer or gathered by him subsequent to the original

assessment showed that the statement made by the assessee at the stage of the original assessment proceedings cannot be true or full, then he is

entitled to initiate proceedings u/s 34(1)(a) notwithstanding the fact that he has accepted the statements of the assessee made at the stage of the

original assessment without further scrutiny, we are not inclined to agree with the Tribunal that in this case the Income Tax Officer has tried to make

good his deficiency in the original assessment. Admittedly, the materials gathered by the Income Tax Officer which formed the basis of the

reassessment were not there at the stage of the original assessment. He had no opportunity to consider these materials at that stage. There is,

therefore, no question of any deficiency in his original assessment. It is in view of the materials gathered subsequently after the original assessment,

the reassessment had been initiated on the ground that from those materials it is reasonable to infer that the statement made by the assessee

regarding the credit in the name of Thenappa Chettiar cannot be true. We are of the view that, on the materials, the initiation of proceedings u/s

34(1)(a) was justified.

42. This case related to the discovery of subsequent information.

43. In D.L.F. Housing and Construction Pvt. Ltd. Vs. Union of India and another, , it has been held (headnote):

For the assessment year 1960-61, the assessment of the assessee was completed by the Income Tax Officer on a total income of Rs. 5,04,449.

Before the completion of the statement, the Income Tax Officer sought certain clarifications in regard to the purchase of some land by the assessee.

The assessee explained that it had originally, jointly with the firm, entered into an agreement to purchase land from the vendor at the rate of Rs.

1,025 per bigha, but eventually had entered into an agreement with the vendor for purchasing the same land at Rs. 1,350 per bigha, that the total

purchase price was Rs. 21,93,058, that a sum of Rs. 5,50,000 was paid by way of earnest money to the vendor, a sum of Rs. 6,10,958 was paid

in cash and for the balance sum of Rs. 10,30,000 negotiable hundis were given, which were duly dischanged. However, a doubt arose in the mind

of the Income Tax Officer as to why the assessee should purchase the land at a higher price, but the Income Tax Officer accepted the explanation

of the assessee and made no additions to the income. The Income Tax Officer called upon the assessee to produce its account books and cash

vouchers in discharge of the liability of Rs. 10,30,000, which, according to the assessee, was furnished to the Income Tax Officer. Thereafter, the

Income Tax Officer issued notice u/s 147(a) read with section 148 of the Income Tax Act, 1961, for reopening the assessment of the assessee by

relying on the affidavit of the vendor in which he had stated he had received only a sum of Rs. 19,00,654 towards the purchase price of the land

and not the entire sale price of Rs. 21,93,058 and also on the grounds that independent inquiries revealed that the market rates were much below

the alleged purchase price of Rs. 1,350 per bigha, that the purchase price had been inflated to the extent of Rs. 2,92,404 and income to that extent

had been concealed by the assessee and that a cash loan of Rs. 10,30,000 from the vendor was found in the books of the assessee, but the same

did not appear in the books of the vendor, which led to the conclusion that the amount represented income of the assessee from undisclosed

sources. On a writ petition filed by the assessee challenging the notice of reassessment issued by the Income Tax Officer, the assessee contended

that at the time of the original assessment he had disclosed fully and truly all necessary facts and had produced all vouchers, receipts and payments,

that the Income Tax Officer was fully aware that the vendor was also an assessee and could have verified the transaction by reference to the

vendor''s books, and that the mere fact that the vendor went back upon the transaction and alleged that he had received only a sum of Rs.

19,00,654 could not constitute material on the basis of which the assessment could be reopened.

Held, that the Income Tax Officer had, at the time of the original assessment, no reason to doubt the purchase price as stated by the assessee, but

when he came across the statements and accounts of the vendor, he had reason to believe that the assessee''s income had escaped assessment by

reason of his wrongly stating the material facts as to the purchase price. The only method by which the Income Tax Officer could satisfy himself, as

to the correctness or otherwise of the statement of the vendor. Was by initiating reassessment proceedings and examining and cross-examining the

assessee and the vendor in the course of the reassessment proceedings. The reassessments could not become invalid merely because even at the

time of the original assessment, the Income Tax Officer did not compare the account of the assessee with that of the vendor. The Income Tax

Officer had material on the basis of which he could have entertained a reasonable belief that income had escaped assessment by reason of the

omission of failure on the part of the assessee to disclose fully and truly all material facts at the time of the original assessment, and the notice issued

for reassessment was valid.

44. On facts it was found therein that there was no true and full disclosure.

45. In R.L. Traders Vs. Union of India, , it has been held (headnote):

The jurisdiction to reopen an assessment is circumscribed by the conditions laid down in section 147(a) of the Income Tax Act, 1961. Certain

facts have to exist to show that the assessment can be reopened. The existence of such reasons and a direct nexus between those reasons and the

alleged evasion is a condition precedent for reopening the assessment.

The Income Tax Officer issued notices reopening the assessment of the petitioner u/s 147(a) read with section 148 on the ground that during the

course of some other proceedings, it was discovered that being was being sold through commission agents to havala agents at an under invoiced

rate and that the petitioner had also been selling to these commission agents at an underinvoiced rate. The petitioner filed a writ petition challenging

the reassessment notice on the ground that the material which the Income Tax Officer had was too vague and uncertain to connect the petitioner

with any under invoicing or alleged concealment of income and, therefore, there was insufficient material for the Income Tax Officer to have

''reason to believe'' that income had escaped assessment:

Held, that where there were disputed facts, it was not easy to ascertain what was the material and what was the nexus. Unless the material

appearing against the assessee was examined by the court n detail, it would not be easy to ascertain whether the reasons actually existed for

reopening the assessment. It was difficult to decide what was relevant in a writ petition and that the Income Tax Officer could decide the question

as a preliminary issue during the proceedings for reopening the assessment and then the assessee could appeal if he was aggrieved.

46. In this case, Because there were disputed facts which were not easy to ascertain and what was the material and what was the nexus, it was

directed to be decided as a preliminary issue.

47. No doubt, in some of the cases cited by the Revenue, the matter was relegated to the Revenue. But we do not think that that could be the

universal rule in all cases. As rightly urged by Dr. Debi Pal, the jurisdiction of this court is limited to find whether there is a live link or a reasonable

nexus. For that limited finding at least. The reasons could be examined. No doubt, the Income Tax authorities are not bound to furnish the assessee

with the file containing the reasons. But in this case, the reasons have been furnished and copy therefore has also been given to the appellant. All

that he wanted at our hands is to examine whether the reasons contained in the notices, which are more or less identical in language, have a live link

or a close nexus. According to him, as to what is the scheme of the Act with regard to the obligation on the part of the assessee to furnish the

return with true and full particulars and also such other information can be gathered from Modi Spinning and Weaving Mills Vs. Income Tax

Officer, , it has been held:

The scheme underlying these sections seems to indicate that to begin with, at the time of filing of return, an assessee was merely required to furnish

the particulars of his income in the prescribed form. In other words, he was to truly and fully supply the information sought for in various columns of

the prescribed form of return. If the Income Tax Officer felt that the information conveyed, as per the prescribed form, was correct and was

sufficient for making an assessment order, he could proceed to assess the persons filling the return on its basis. At that stage, no question of the

assessee furnishing any information other than that required to be furnished in the prescribed form of return could arise. Accordingly, if the assessee

truly and fully disclosed all information required to be supplied in the prescribed form of return, no question of his failure to disclose any other

particulars of his income at that stage could arise, the next stage in the process of making an assessment was where a return in the prescribed form

had been filed but the Income Tax tax Officer felt that although the information conveyed by the return was sufficient for making an assessment

order, but before that information could be acted upon, the assessee should be required to verify the same by producing evidence. In such

circumstances, he could require the assessee to produce evidence in support of his return. Here again, the assessee was required to produce

evidence only in support of the statements made by him in the prescribed form of return and there was no obligation upon him to convey any other

or further information or to produce evidence in support of any other matter which may ultimately be found to be relevant for the purpose of

making an assessment in his case. There could yet be a third stage where the Income Tax Officer felt that not only the information conveyed in the

return required verification but also a that it was not sufficient for making an assessment order. In such a case, he was required to specify the points

and to ask the assessee to produce evidence on those points. He could also require the assessee to produce some particular evidence having a

bearing on that point. It is at the stage when the assessee was required by the Income Tax Officer to elucidate some particular point that the

assessee had again been obliged to disclosed all primary facts truly and fully in respect of that point. Till this stage was reached, there was no

obligation on the assessee to disclose or produce evidence in respect of the points other than those in respect of which the assessee was, as

provided in the prescribed form of return, obliged to furnish full and true information. In our opinion, so long as in the assessment proceedings the

third stage was not reached, the assessee could not be blamed or held liable for not disclosing some information which till then he was not required

to furnish in the prescribed form but which ultimately was found to be relevant in connection with his assessment.

48. From the above, it is clear that there are three stages: (1) To file the return as required under the Act and supply all the information sought for

in the various columns in the prescribed form of return. (2) Should the Income Tax authorities feel that the information was not sufficient, they could

require the assessee to produce evidence in support of his return. This is u/s 143(2) of the Act. (3) Then again, at the third stage, the Income Tax

Officer could require the assessee to produce some particular evidence which has a bearing on that particular point, this is u/s 142 of the Act. This

ruling has been followed by the Madhya Pradesh High Court as seen from Smt. Kanchanbai Vs. Commissioner of Income Tax, , wherein it was

held (headnote):

It is well-settled that to confer jurisdiction on the Income Tax Officer u/s 147(a) of the Income Tax Act, 1961, two conditions are to be satisfied:

(i) the Income Tax Officer must have reason to believe that income, profits or gains chargeable to Income Tax have escaped assessment, and (ii)

he must also have reason to believe that such escapement has occurred by reason of either (a) omission or failure on the part of the assessee to

make a return of his income u/s 139 of the Act, or (b) omission of failure on the part of the assessee to disclose fully and truly all material facts

necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer could have

jurisdiction to issue a notice u/s 148 read with section 147(a) of the Act. What facts are material and necessary for assessment will differ from case

to case.

For the assessment years 1956-57, 1957-58 and 1958-59, the assessee who derived income from money-lending business, was originally

assessed as an individual on May 30, 1960, at the time of original assessments, the assessee had submitted a list of the parties from whom interest

was received by the assessee. The assessee did not maintain any books of account and no inquiry was made at the time of the original assessments

regarding the source of investments made by the assessee. Subsequently. The Income Tax Officer got information that the assessee had been in

possession of substantial quantity of gold which was sold by the assessee, that the amount of sale proceeds was invested in money-lending

business and as the Income Tax Officer had reasonable grounds to believe that income liable to tax had escaped assessment, he initiated

reassessment proceedings u/s 147(a) of the Act, after obtaining the sanction of the Commissioner of Income Tax for each of the three assessment

years. The assessee filed returns under protest challenging the legality of the reassessment proceedings and contended that she had received

ornaments from her father and father-in-law. The Income Tax Officer did not accept the version of the assessee and the amount obtained by the

assess but sale or ornaments was added to the assessee''s income from undisclosed sources. On appeals, both the Appellate Assistant

Commissioner and the Tribunal affirmed the order of the Income Tax Officer. On a reference.

Held, that the assessee had produced before the Income Tax Officer at the time of original assessments a list of persons to whom moneys had

been advanced by the assessee and the amounts of interest received from them. At the time of filing of her returns for the relevant assessment

years, the assessee was not required to furnish information regarding the source of the capital invested in money-lending business and the Income

Tax Officer had, at no stage, required the assessee to furnish the information. Therefore, there was no omission or failure on the part of the

assessee to disclose fully and truly all material facts necessary for her assessment for the relevant assessment years and the condition precedent for

the exercise of powers u/s 147(a) of the Act was not fulfilled. The Income Tax Officer was, therefore. Not justified in reopening the assessments

u/s 147(a) of the Act for any of the years"".

49. Thus, on point No. 1 we conclude that the jurisdiction of this court is not completely shut out, but is still available to determine the limited

questions, namely, whether there is a live link or a close nexus to the notices. With this, we go on to examine the notices issued for the various

assessment years.

50. In the case of the assessee which came up before this court earlier and reported in Thanthi Trust Vs. Income Tax Officer, , it was held at page

286 thus:

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 in 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 t 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.

51. It is true as rightly contended by Mrs. Nalini Chidambaram appearing for the Revenue, that even if one of the reasons is sufficient, that will be

enough to uphold the validity of the notice, she is fortified in relying on the decision in Jameson and Magrudar Co. Pvt. Ltd. Vs. Income Tax

Officer and Others, , in which it has been held thus (headnote):

If a notice is issued on more than one ground, and one of the grounds is sufficient to uphold the validity of the notice, then even if the other

grounds are not sustainable, it will not make the notice bad.

The Income Tax Officer issued notice to the assessee u/s 148 of the Income Tax Act, 1961, for the assessment year 1971-72 on the grounds, (i)

that in consequence of information received from the Revenue audit, it was found that deductions u/s 80K, 80L and 80M had been wrongly

allowed and no deductions could be allowed in view of the provisions of section 80A(2) since there was no gross total income within the meaning

of section 80B(5), the net result being a minus figure and loss had been carried forward due to incorrect dedications; (ii) that excess relief u/s 80J

had been allowed due to incorrect computation of capital employed; (iii) that travelling allowance disallowable u/s 37(3) read with rule 6D of the

Income Tax Rules, 1962, had not been disclosed in the return; (iv) that the assessee paid compensation on account of short production of

controlled cloth which was in the nature of penalty and should have been disallowed; and, hence, the Income Tax Officer had reasons to believe

that on account of the failure of the assessee to disclose fully and truly all material facts necessary for its assessment and also in consequence of

information in the possession of the Income Tax Officer, the assessee''s income had escaped assessment. The question arose whether the condition

precedent for assumption of jurisdiction for initiation of proceedings in respect of income escaping assessment had been fulfilled or not;

Held, that the information that the Income Tax Officer had allowed the deductions u/s 80K, 80L and 80M before considering the depreciation,

would clothe the Income Tax Officer with jurisdiction to issue the notice. Therefore, the reopening of the assessments was valid.

52. It is in the light of this, we will examine the notices.

53. For the assessment year 1969-70, ABC newsprint stock register which contains account from July 1, 1967, to June 30, 1971, on a

comparison with the financial statements filed for the purpose of Income Tax, shows huge difference between closing stock and the purchase.

Therefore, the difference in stock, in the absence of explanation, must have been purchased with undisclose income, the advertisement deposit

account contained receipt of lump sums in the assessment year also. This position is at variance with the explanation offered by the appellant. In the

assessment year 1970-71, the amounts representing the income of the appellant have not been properly accounted for. The plea of the appellant is

that at the time of original assessment, the assessing authority had full knowledge about the existence of the ABC newsprint stock register. The

accounts for the year ended June 30, 1969 (Sales Demand Statement), state as follows:

Add:

Rs.

Total demand as per accounts 95,28,197

Total demand as per ABC reconciliation 95,23,780

4,417

54. Further, it is seen from Thanthi Trust Vs. Income Tax Officer, itself, that the authority was aware of the figures furnished by the Audit Bureau

of Circulation. It is stated at page 287 thus:

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 the trust. These grounds, if established, would came within the purview of section 147(a).

For the year 1960-61 the tree 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.

55. Therefore, where the reconciliation statement relating to the sales which shows the total demand as per ABC reconciliation. The assessing

authority could have called upon the appellant to furnish that particulars. We do not think this contention is well-founded. Therefore, applying the

ruling of the Allahabad High Court in Modi Spinning and Weaving Mills Vs. Income Tax Officer, and Smt. Kanchanbai Vs. Commissioner of

Income Tax, , which succinctly set out the scheme of the Act, which extracts we have extracted above, this is not case of an assessee failing to

furnish true and full return. Unless the assessee was called upon, there was no obligation on the part of the assessee to produce any further

material, nor can the assessee delve in the mind of the authority to find out what inference could be drawn either on facts or on law.

56. As regards the advertisement charges, the finding of the appellate authority for the year 1970-71 may now be extracted:

As pointed out by the Commissioner of Income Tax (Appeals) in respect of the same addition, the additions rest on surmises and suspicions. The

explanation which was originally given was subsequently changed but the fact remains that the balances have been adjusted to revenue account in

1972-73 and offered as income. This has been accepted by the Department, in the face of this development, the variation in the explanation loses

its significance. Having assessed the same in a subsequent year. The Income Tax Officer cannot subject it to assessment in the current year when it

retained the character of deposit and when there is no positive material with the Income Tax Officer to show that the canvassers only settled the

bills, but not made deposits or advances. In addition, the appellant has furnished the following details in respect of the advertisement income and

advertisement deposit balance.

Particulars:

Acct. Year 1966-67 1967-68 1968-69 1969-70 1970-71 1971-72

Asst. Year 1968-69 1969-70 1970-71 1971-72 1972-73 1973-74

Adv. Income 2965304 3576001 42330134 5631567 7047772 7768658

Adv. Dep.

balance 151230 363456 788002 789222 90872 90447

The appellant points out that advertisement income offered for assessment has been on the increase and the balances in the advertisement account

were not added for the assessment years 1968-69 and 1969-70. The appellant''s contention is correct. There is nothing to suggest that the trust

has resorted to the practice of suppression of income by treating the advertisement receipts as advertisement deposits. In fact, no serious omission

of irregularity in respect of advertisement receipts has been pointed out by the Income Tax Officer. On the whole, the addition is no warranted and

accordingly the Income Tax Officer is directed to delete the same after due verification of the facts that Rs. 7,00,350 has been adjusted to the

revenue account in the assessment year 1972-73 and included in the income and the assessment accepting the above potion has been made.

Subject to verification on the above point, the appeal is allowed.

57. This affords a complete answer with regard to the omission or failure on the part of the appellant.

58. For the assessment year 1970-71, the first reasoning is in relation to ABC newsprint stock register about which we had already made a

reference. The second reasoning is in relation to the two promissory notes, one dated April 21, 1969, for Rs. 1,30,000 executed by Pachaiyear

Sugar Mills (P.) Ltd., and another dated January 1, 1970, executed by D. R Adityan for a sum of Rs. 69,200. According to Dr. Debi Pal these

promissory notes are beyond three years and, therefore, the recovery of these promissory note amounts is not possible. Hence, there is no rational

nexus or live link, He also relies in this regard on Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , wherein it

was held at page 153 as follows:

In our judgment, the law laid down by this court in the above case a fully applicable to the facts of the present case. There can be no manner of

doubt that the words ''reason to believe'' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds

and that the Income Tax Officer may act on direct or circumstances evidence but not on mere suspicions, gossip or rumour. The Income Tax

Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied down not exist or is not material or relevant to

aspect though the declaration or sufficiency of the reasons for the belief that the conditions are satisfied does not exist or is not material or relevant

to the belief required by the section. The court can always examine this aspect though the declaration of sufficiency of the reasons for the belief

cannot be investigation by the court.

59. We consider that this is not the correct way of approach. What is a pointed out is that. These loans have not been accounted for in the books

of the assessee. The question of recovery does not come in. Therefore, this reason appears to be valid.

60. The next is the suspense register. Tha stand of the appellant is that the suspense register maintained by the appellant does not show any

discrepancy in view of the following statements:

SUSPENSE-CASH BALANCE

Madras Office

Date	Balance as per suspense register	Balance as per book
	Rs.	Rs.
30-6-1968	65,445.79	65,445.79
30-6-1969	1,49,131.80	1,49,131.80
30-6-1970	1,48,471.82	1,48,741.82
30-6-1971	1,66,107.05	1,66,107.05
30-6-1972	2,27,367.62	2,27,367.62

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61. Here again, the suspense register is for the assessment year 1970-71 which shows huge discrepancy which came to light in the course of the

assessment for the year 1974-75. Therefore, this is not a case of omission by the appellant. But a subsequent discovery which could have been

discovered with due diligence or by calling upon the appellant to produce the relevant account books. Hence, for the assessment year 1974-75,

that cannot projected as a reason. For the assessment year 1971-72, in addition to these two reasons, on other reasons that is given is sale of

excessive wastage. The sale of wastage at 8.89% accounted for that year had year fully accepted by the Income Tax authorities. The fact that in

the subsequent year 1974-75, 5% came to be arrived at cannot constitute a ground for reopening. This squarely falls with the ratio of the Supreme

Court decision laid down in Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, .

62. The ground is with regard to excessive commission, it is stated by the authorities that the sales were obviously to agents who are none other

than the employees of the appellant and such excessive commission payments to these persons were not genuine. We find some difficulty in

accepting this line of reasoning because unless it is clear that the payments to the employees of the appellant have been safeness off to the trust,

there is no question of failure to render a true and full account. We think the ruling in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and

Others, supports the appellant. For the assessment years 1972-73 and 1973-74, the same grounds have been urged. But as regards 1973-74, the

notice issued is u/s 147 of the Act which is well within four years. With regard to the other year, the law clearly lays down, that it must be within

four years, if it is u/s 147(a). In our view, on a very careful consideration, the notices for the assessment years 1969-70, 1971-72 and 1972-73

have to be held to be invalid because the reasons do not have a live-link or a close nexus. However, for 1970-71, we have to uphold the notice

since in paragraph 3 of that notice reference is made to the two promissory notes which have not been brought into account. That will show that

the appellant had not submitted a true and full return and this omission of the appellant had not submitted a true and full return and this omission of the appellant will confer jurisdiction on the officer. For the assessment year 1973-74, the notice, being well within time, will have to be upheld.

63. In view of the foregoing discussion. We hold that the writ petitions are maintainable for the limited purpose of deciding the jurisdictional issue.

64. We do not think the appellant could be denied the relief on the ground of delay. As matter of fact, we have already set out, the prayer in the

Writ petitions leading to the writ appeals. In P.C. Doshi and Another Vs. 7th Income Tax Officer, C-I Ward, Bombay, , it has been held:

Now, so far as the writ of prohibition is concerned, it cannot be said that the notices of demand suffer from a patent lack of jurisdiction. If the

orders, in pursuance of which they have been issued, stand, no objection can be taken with regard to the consequential notices of demand. We

may, however, agree with him that, in so far as the relief by way of writs of certiorari seeking to quash the orders made under sections 35(7) and

35(8) are concerned, he may be entitled to rely on the said decision provided he may be entitled to rely on the said decision provided he can

satisfy us that there is a patent lack of jurisdiction on the part of the respondent in making the said orders. In AIR 1937 265 (Privy Council) , relied

on by him, it has been observed that an application for prohibition or certiorari is never too late as long as there is something left for it to operate

upon. This observation was made in the context of a prayer for a writ of prohibition seeking to prevent the action of pulling down a building which

was being done in consequence of an order, which was ultra vires the authority making it. The said decision, in our opinion, is consistent with the

view which Mr. Justice S. T. Desai has taken in Madhavlal Sindhoo Vs. V.R. Idurkarand Another, that, if there is a patent lack of jurisdiction,

normally, the court will interfere and will not stay its hands merely on the ground of delay on the apart of the petitioner to come to the court.

65. The decision in Srimati Suniti Devi Jaipuria Vs. Income Tax Officer, ""A"" Ward and Others, , is also to the same effect. In Calcutta Discount

Company Limited Vs. Income Tax Officer, Companies District, I and Another, , it has been held

Mr.Sastri next pointed out that at the stage when the Income Tax Officer issued the notices he was not acting judicially or quasi-judicially and so a

writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction.

Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and

unnecessary harassment, the High Courts, it is well-settled, will issue appropriate orders of directions to prevent such consequences.

66. Therefore, for a writ of prohibition, we do not propose to deny the relief on the ground of delay. Accordingly, W.A. Nos. 539 and 540 of

1981 will stand allowed. W.P. Nos. 1742 of 1980 and 2297 of 1981 will stand allowed. W.P. No. 1222 of 1979 will stand dismissed. Since

W.A. No. 1828 of 1987 is against an interlocutory order and the writ petition itself has been allowed. no further orders are necessary. There will

be no order as to costs.

