M/S. Phool Chand Bajrang Lal And Another vs Income-Tax Officer And Another on 13 July, 1993

Equivalent citations: AIR1993SC2390, [1993]203ITR456(SC), JT1993(4)SC291, 1993(3)SCALE180, (1993)4SCC77, [1993]SUPP1SCR28, AIR 1993 SUPREME COURT 2390, 1993 (4) SCC 77, 1993 AIR SCW 2599, 1993 ALL. L. J. 1230, 1993 TAX. L. R. 899, 1994 (1) UPTC 144, (1993) 4 JT 291 (SC), 1994 UPTC 1 144, 1993 KERLJ(TAX) 471, (1993) 69 TAXMAN 627, 1993 (4) JT 291, (1993) 203 ITR 456, (1993) 116 TAXATION 381, (1993) 113 CURTAXREP 436, (1993) 3 SCJ 178

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Bench: S.C. Agrawal

ORDER

A.S. Anand, J.

1. This appeal, on a certificate of fitness granted by the High Court under Article 133 of the Constitution of India is directed against the judgment in Civil Misc. Writ Petition No. 1541 of 1974 decided by the Allahabad High Court on 24.11.1976 and arises in the following circumstances:

2. The appellant is a firm which was assessed to income-tax at Azamgarh (U.P.). In the Income Tax Returns for the assessment year 1963-64, the assessee claimed that it had borrowed a sum of Rs. 50,000 from M/s. Jain Finance Distributor (India) Private Limited, Calcutta (hereinafter called the Calcutta company) on 19.5 1962, An entry dated 25.5.1962 in that behalf was made by the assessee in its books of account as well as in the balance sheet as liability. The loan was stated to have been raised in cash and it was also claimed to have been returned in cash in 1968, though the interest on loan was slated to be paid by cheque/bank drafts till repayment in 1968. During the assessment proceeding, the Income-tax Officer directed the assessee to file a copy of the account of the Calcutta company to support the loan transaction. The assessee produced a confirmatory letter dated 15.11.1963 from the Calcutta company, confirming the payment of loan of Rs. 50,000 to the assessee. The case of the assessee before the ITO was that one of its partners, namely Bajrang Lal, (since deceased) had gone to Calcutta on 13th May, 1962 with a draft of Rs. 31,000 and Rs. 151 in cash in order to make payment of outstandings at Calcutta. For making certain purchases of cloth and for payment of other outstandings against the assessee, the said partner, while in Calcutta, raised a cash loan of Rs. 50,000 from the Calcutta company and on his return to Azamgarh on 25th May, 1962 necessary entries were made in the books of account of the assessee showing a credit of

Rs. 50,000 from the Calcutta company by way of cash loan to the assessee. The ITO finalised the return and for each of the assessment years 1963/64 to 1968/69, the ITO allowed deduction of interest claimed to have been paid to the Calcutta company by the assessee. From a perusal of the record it appears that the Income Tax Officer entertained some doubts about the genuineness of the loan transaction and accordingly he addressed a letter to the Income Tax Officer, District Companies (III)-196/J/1, Central Revenue Building, Calcutta on 19th May, 1970 enquiring if the Calcutta company fell within its jurisdiction. It was stated by the ITO in that letter that he wanted to gather certain information from the case records of the Calcutta Company. In reply the ITO Calcutta on 7.7.70 sent the following communication to the ITO Azamgarh:

> Confidential Regd. Post A/D OFFICE OF THE INCOME TAX OFFICER, "K" WARD, COMPANIES DISTT. III P/7, CHOWRINGHREE SQUARE CALCUTTA No. C-III/J-46/K/606 Date 7.7.70 Income Tax Officer, A Ward, Azamgarh, (by name) SUB: M/s. Jain Finance Distributors (India) Private Ltd., 34/IB, Sudhir Chatterjee St., Calcutta.
>
> Ref: Your letter No. P306/A, Dt. 19.5.70 addressed to ITO "I" Ward, Companies Dist. III, Calcutta.
>
> Please refer to your above letter asking for some information about Jain Finance Distributors India Private Ltd., This company is now assessed to tax in my ward. I have however to inform you that according to the confession of Shri Tara Chand Surana Mg. Director of the company it appears that the so-called company is really a dummy concern of Shri Surana. The company never actually advanced any loans to any person and according to the confession of Shri Surana the business of the company consisted entirely of name-lending. The company lent its name to enable different parties to bring into their books 'black money' under the guise of loan from Jain Finance Distributors (India) Pvt. Ltd. No finance was ever distributed, only the name of the concern was lent.
>
> This position has been accepted in the assessments of the company for 1962-63, 1963-64 and 1964-65. In the circumstances you are requested not to treat any transaction with this concern as genuine.
>
> I can furnish further information to you if you sent me full particulars of transactions which you may be enquiring about.
>
> Sd/-
>
> (A.R. Das Gupta) Income Tax Officer 'K' Ward (Companies Distt. III, Cal.)

3. After receipt of the above communication, the assessing authority on 26.8.1971 issued a notice to the assessee stating therein that he was prima facie satisfied that the loan transaction of Rs. 50,000 was not genuine and that since the assessee had failed to disclose fully and truly all the material

facts necessary for assessment for the year 1963/64, income chargeable to tax had escaped assessment and he therefore proposed to reopen the case for the assessment year 1965-66 under Section 147(a) of the Indian Income Tax Act, 1961 (hereinafter called as the Act). Objections were invited from the assessee. In his reply dated 25.11.1972, the assessee contended that there had been no non-disclosure on its part in respect of the loan transaction of Rs. 50,000 and that since all the primary facts had been disclosed by the assessee at the stage of the original assessment, the provisions of Section 147(a) were inapplicable. After considering the reply, the ITO issued a notice under Section 148 of the Act to the assessee proposing to reassess his income, after recording that he had reason to believe that the assessee's income in respect of which he was assessable to tax had escaped assessment within the meaning of Section 147 of the Act. The assessee was called upon to file its return for the assessment years 1963-64 to 1968-69 within 30 days from the date of service of the notice. The proposal of the ITO to reopen the assessment had been submitted earlier to the Commissioner of Income Tax on 1 1.72 with the relevant record and sanction of the Commissioner for reassessment was obtained on 7.2.72. On 26.2.72, the assessee filed its return for the assessment year 1963-64 and later appeared before the ITO in person on 26.9.1973. The assessee filed before the ITO Azamgarh an affidavit from the creditor, Calcutta Company, in support of its contention that the cash loan had in fact been raised from the creditor. The ITO directed the assessee to produce the Calcutta creditor for cross-examination in respect of his affidavit. The creditor, Shri Surana, Managing Director of the Calcutta Company appeared and was cross examined by the ITO. Daring the course of his cross examination, he admitted before the ITO that he had made a confession to the ITO at Calcutta on the lines which had been indicated in the letter of the jurisdictional ITO from Calcutta dated 7.7.70. The creditor, was thereafter reexamined by the counsel for the assessee but nothing was elicited from the creditor regarding the correctness or otherwise of the 'confession' alleged to have been made by him before the ITO at Calcutta, during the assessment proceedings relating to his company at Calcutta. After considering the entire material on the record, a show cause notice was issued by the ITO, Azamgarh to the assessee detailing all the facts gathered by him from the contents of the letter of the ITO at Calcutta, the confession allegedly made by the creditor before the ITO at Calcutta in respect of assessment years 1962-63 to 1964-65 and the statement of the creditor before him. The assessee was called upon to reply out he did not give any reply to the show cause notice. While the matters rested here, the assessee filed writ Petition No. 1541/74 in the High Court of Judicature at Allahabad on 18.3.74 seeking the quashing of the notices issued under Section 148 of the Act and to restrain the 1TO from continuing with the reassessment proceedings.

4. A Division Bench of the High Court after a detailed consideration of facts and law, came to the conclusion that the information furnished by the ITO Calcutta could form the basis for entertaining a reasonable belief on the part of the ITO, Azamgarh, that as a result of false representation made by the assessee regarding the raising of cash loan from the Calcutta company, his income had escaped assessment during the relevant assessment year and it dismissed the writ petition with costs on 24.11.1976. The assessee applied for a certificate of fitness to file an appeal in the Supreme Court under Article 133 of the Constitution. The Division Bench of the High Court while granting the certificate opined:

> On one of the questions which arise out of our order in the writ petition, there is considerable divergence of views amongst different High Courts. Some High Courts

have taken the view that in ... the cases of loans borrowed by an assessee, if he has disclosed the details thereof to the Income Tax Officer at the time of the original assessment, he (the assessee) is under no further obligation to inform the Income Tax Officer that such loans were bogus ones. Whether such loans are genuine or bogus according to this view, a matter of inference which the Income Tax Officer has to draw on the facts disclosed after proper verification and that if he had treated such loans as genuine, he can not, later, re-open the assessment merely because he was subsequently reason to believe that such loans were not genuine.

A few other High Courts have taken a contrary view on the above question.

The aforesaid question is, in our opinion, a substantial question of law of general importance which needs to be decided by the Supreme Court.

That is, how, the matter is before us.

5. Before we take up for consideration the rival submissions made by the learned Counsel for the parties and consider the authorities cited by them, it would be appropriate to first notice some of the provisions of the Act. The relevant provisions of Sections 147, 148, 149 as they stood at the relevant time for the purpose of this case read as under:

147. Income escaping assessment -if-

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or xxx xxx xxx

148. Issue of notice, where income has escaped assessment-

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

xxx xxx xxx

149. Time limit for notice (1) No notice under Section 148 shall be issued,

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

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

xxx xxx xxx

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

6. From the plain phraseology of the above Sections of the Act, it appears that two conditions precedent which are required to be satisfied before an Income Tax Officer can acquire jurisdiction to proceed under Clause (a) of Section 147 read with Sections 148 and 149 of the Act, beyond the period of four years but within a period of eight years, from the end of the relevant year, are: (a) that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to tax had either been under assessed or escaped assessment and (b) that the ITO must have reason to believe that such escapement or under-assessment was occasioned by reason, of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Both these conditions must co-exist in order to confer jurisdiction on the Income Tax Officer. The Income Tax Officer is obliged, before initiating proceedings under Section 148 of the Act to record the reasons for the formation of his belief to reopen the assessment.

7. Shri G.C. Sharma, the learned senior counsel appearing for the appellants, submitted that the obligation on an assessee during the assessment proceedings is primarily to disclose all material and relevant facts i.e. the primary facts and once that disclosure has been made, it is for the Income Tax Officer to draw the necessary inferences there from on the basis of such facts and that the assessee is under no obligation to also state as to what inferences could be drawn from those primary facts. He submitted that it is for the Income Tax Officer to draw the correct inferences from those primary facts and if an Income Tax Officer draws some inferences at the time of the assessment proceedings from those disclosed primary facts and accepting the same concludes the assessment proceedings, any subsequent information which may create an impression on the mind of the Income Tax Officer that either the primary facts were not true and full or that the inference drawn therefrom were not correct, would not clothe him with the jurisdiction to initiate action for reopening of a concluded assessment. Argued Mr. Sharma that since in the instant case the assessee had disclosed the primary facts and the Income Tax Officer after accepting those facts had completed the original assessment, he could not reopen the assessment, on getting information from the Calcutta ITO to the effect that the Calcutta company was merely a name lender and had not advanced loan to any party. Learned Counsel contended that even if it be assumed that the ITO, Azamgarh had entertained doubts about the genuineness of the loan transaction and sought information from the Calcuta ITO, the reply furnished by the Calcutta ITO, could at the best be said to cast a suspicion on the genuineness of the transaction but could not form the basis for "reason to believe" that the income chargeable to tax had escaped assessment during the relevant assessment year on account of the omission on the part of the assessee to disclose true and full facts during the assessment proceedings. Learned Counsel maintained that the subsequent information from ITO, Calcutta was vague and, therefore, the enquiry under Section 147 of the Act could not be commenced and in any event the subsequent information could not justify the reopening of the assessment, particularly, when it was open to the

Income Tax Officer to have conducted an enquiry during the original assessment proceedings to clear any doubts which he may have entertained with regard to the loan transaction. Learned Counsel referred to certain judgments in support of his submissions. We shall refer to them in the course of this judgment.

8. Mr. K.P. Bhatnagar, the learned Counsel appearing for the respondent, on the other hand submitted that the obligation of an assessee is not merely to make disclosure of the basic or primary facts at the time of assessment but to make a "true and full" disclosure of such basic facts, and an omission to do so, would clothe the I.T.O. with the jurisdiction to reopen a concluded assessment. He contended that in the instant case, the Income-tax Officer at Azamgarh came to possess specific information from I.T.O. Calcutta, which was sufficient for the formation of his belief, that the assessee had not made a true and full disclosure in the return and that income chargeable to tax had escaped assessment on that account. According to Shri Bhatnagar, the question as to whether the grounds are adequate or not is not a matter for the Courts to investigate so long as the belief of the I.T.O. is based on relevant material and is otherwise bonafide. Learned Counsel supported his arguments by reference to certain judgments which we shall deal within the latter part of this judgment.

9. The High Court has dealt at length with the question whether the two condition precedent for exercising jurisdiction under Section 147 of the Act had been satisfied by reference to the facts of the case and the case law cited before it. The High Court noticed that the jurisdictional ITO from Calcutta had conveyed to the ITO at Azamgarh that the Managing Director of the Calcutta Company Mr. Surana, had made a confession before him to the effect that the Calcutta Company had not advanced any loan to any person during the assessment proceedings of the Calcutta Company for the years 1962-63; 1963-64 and 1964-65, and since, it was the case of the assessee that he had had raised a cash loan of Rs. 50,000 in May, 1962 from the Calcutta Company on interest, the information furnished by the jurisdictional ITO at Calcutta in his letter dated 7.7.1970, was sufficient for the Income-tax Officer to have reasons to believe that the Calcutta Company had prima facie not advanced any money to the assessee and, therefore, some income chargeable to tax had escaped taxation on account of the failure of the assessee to disclose full and true material facts. In the words of the High Court:

> As the information furnished by the I.T.O., Calcutta, could form the basis for a reasonable belief on the part of the I.T.O., Azamgarh, that as a result of a false representation made by the petitioner as to his having borrowed money from the Calcutta Company, his income had stamped assessment, the I.T.O., Azamgarh, could take notice under Section 147(a) of the Act.

10. Certain tell tale circumstances of the case support the above view of the High Court.

11. The assessee was being assessed to tax at Azamgarh. It was claimed that it had raised a cash loan of Rs. 50,000 in May, 1962 from the Calcutta Company on interest. According to the assessee, the loan was raised by one of the partners of the firm who had gone to Calcutta for making purchases of cloth etc. In para 3 of the writ petition filed by the assessee in the High Court it was stated thus:

> That on 13th May, 1962 one of the partners namely Sri Bajrang Lal who is since deceased had gone to Calcutta with a draft of Rs. 31,000 and of Rs. 151 in cash. The amount was carried by the said partner in order to make payment of outstandings against the firm. In Calcutta the said partner raised the loan of Rs. 50,000 on 19th May, 1962. This loan was raised for making purchases of cloth and also for payment of other outstandings against the firm.

12. The interest on the loan was being paid to the Calcutta Company by draft/cheque and not in cash till the loan was claimed to have been repaid in cash in 1968. Since, the assessee itself stated in paragraph 3 of the writ petition (supra) that the loan had been raised for making purchases of cloth and for clearing other outstanding debts, in the normal course of human conduct if not the entire amount of Rs. 50,000, at least a substantial amount, would have been spent or paid towards the purchases and to clear off the other debts at Calcutta. However, on the assessee's own showing it was not so. This is evident from what the assessee stated in paragraph 4 of the writ petition which reads :

> That when Sri Bajrang Lal returned to Azamgarh on 25th May, 1962 he deposited Rs. 19.98 out of the money that he had taken when he went to Calcutta and the sum of Rs. 50,000 which he had raised by way of loan. On the same day namely 25th May, 1962, necessary entries were made in the books of account of the firm and amongst other entires, M/s. jain Finance Distributors (India) Private Limited given a credit of Rs. 50,000 by way of loan to the firm.
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> (Emphasis supplied)

13. Thus, it is seen that the cash amount of Rs. 50,000 taken at Calcutta was shown to have been deposited with the assessee by Shri Bajrang Lal, when he returned to Azamgarh and an entry was made in the books of account on 25.5.62. Why was the amount not returned at Calcutta if it was not spent is anybody's guess? Again, while the loan was received in cash, the interest was alleged to have been paid by cheque or bank draft and yet the repayment of the loan was allegedly made again in cash in 1968. There is no explanation for this type of dealing with the loan alleged to have been borrowed by the assessee. The I.T.O. at Azamgarh therefore could justifiably entertain doubts about the genuineness of the cash loan of Rs. 50,000 leading to the making of enquiry from the ITO at Calcutta, after completing the assessment proceedings. When the jurisdictional I.T.O. at Calcutta wrote back to the I.T.O. at Azamgarh conveying that the Calcutta Company was an assessee with him and that the Managing Director of the Calcutta Company Mr. Surana, had made a confession about his business activities regarding the assessment years 1962-63, 1963-64 and 1964-65 and had confessed that he was only a name lender and had not advanced any loan to any party during those assessment years, the I.T.O. at Azamgarh prima facie formed the belief that the assessee had not stated the primary facts regarding the loan transaction "fully and truly" during the assessment proceedings. It was under these circumstances that the assessment was sought to be reopened and a notice under Section 148 of the Act after obtaining the requisite permission from the CIT was issued.

14. The judgment in Chhugamal Rajpal v. S.P. Chaliha , relied upon by Mr. Sharrna is clearly distinguishable. In Chhugamal's case (supra) the I.T.O. had initiated reassessment proceedings on the basis of a "circular" issued from the office of the Commissioner of Income Tax, Bihar & Orissa, which stated that three persons named in that circular, were merely name lenders and their transactions were bogus and proper investigation regarding the loans from such persons was necessary before accepting the returns. The I.T.O. merely on the basis of that "circular" initiated reassessment proceedings. This Court held that the circular by itself without any other material and investigation, could not afford any basis to the I.T.O. for forming a reasonable belief that the assessee had not made a full and true disclosure of the relevant facts on which account the income of the assessee chargeable to tax had escaped assessment. Unlike the general "circular" issued by the Commissioner of Income Tax in that case, in the instant case, the I.T.O. at Azamgarh had entertained doubts about the genuineness of the loan transaction of Rs. 50,000 and therefore had made enquiries from the I.T.O. at Calcutta. The reply received from the I.T.O. at Calcutta (supra) was specific and went to show that the Calcutta Company was not a money lender. The information in the present case is vastly different both in content and character than the 'circular' in Chhugamal's case which was held by this Court as not affording a basis for entertaining a reasonable belief that income chargeable to tax had escaped assessment.

15. Mr. Sharma then placed reliance on I.T.O. v. Lakhmani Mewal Das to urge that the information contained in the letter of the I.T.O. at Calcutta dated 7.7.1970 was no better than the 'information' in Lakhmani Mewal Das's case (supra), and since the Supreme Court had characterised that information as wholly vague, indefinite, far-fetched and remote, which could not afford any basis for entertaining a reasonable belief to initiate proceedings under Section 147 of the Act, the same grounds would be available in the present case also. We cannot agree. In Mewal Das case (supra), the assessee in his return, claimed deductions of certain sums paid by way of interest on the borrowings, including the one from Mohan Singh Kanayalal, who was shown as one of the creditors of the assessee. A confession had allegedly been made by Mohan Singh Kanayalal to the effect that he had only lent his name. However, there was nothing to show that the confession related to any loan advanced to the assessee or even the period during which name and not loan was lent. There was no other material either to show that the confession made was in relation to the period April 1, 1957 to March 31, 1958, subject matter of the assessment which was sought to be reopened. It was in that fact situation that this Court found that the information based on the confession of the creditor Mohan Singh Kanyalal was vague, indefinite, remote and far-fetched and could not justify the formation of any belief that the income of the assessee had for the period 1.4.1957 and 31.3.1958 escaped assessment. In the instant case, however the facts are entirely different. From the communication of the jurisdictional I.T.O. at Calcutta, it came to light that the Managing Director of the Calcutta company Mr. Surana had, during the assessment proceedings of that company for the period 1962-63, 1963-64 and 1964-65, made a confession to the effect that he did not lend money to any party whatsoever. The information, therefore, was specific that no money had been lent to any one during 1962-63, 1963-64 and 19964-65. Thus, the period during which the Calcutta Company had only lent its name was specified. That period corresponded to the period during which the assessee had claimed to have received a cash loan of Rs. 50,000 from the Calcutta Company. It is therefore not correct to say that the information available with the I.T.O. Azamgarh in the present case was of the same vague nature as the information available with the I.T.O. in Mewal Das's case

(supra). The judgment in Mewal Das's case (supra) therefore, cannot advance the case of the assessee at all.

16. Mr. Sharma then made an attempt, based on CIT v. Burlop Dealers Ltd. to urge that since it was permissible for the I.T.O. during the original proceedings to have conducted an investigation and verify the material facts, after the assessee had made a disclosure of the primary facts, about the genuineness of the loan transaction, the assessing authority could not on account of an omission on his part to do so, be permitted to reopen a concluded assessment on the basis of material coming to its notice subsequently. Thrust of the argument of Mr. Sharma, was that the finality of a concluded assessment could not be permitted to be violated on the ground that the I.T.O. acquired some information subsequently which gave rise to a belief that income assessable to tax had escaped assessment, after he had earlier accepted the statement made by the assessee in the original assessment proceedings.

17. After the judgment in Burlop's case (supra) some High Courts have also taken the view that if on the disclosed facts, after proper verification, the I.T.O. had treated the loan as genuine, he could not reopen the assessment merely because he had subsequently acquired some information giving him reason to believe that such loan was not genuine. Some' High Courts on the other hand have taken the view (after the judgment in Burlop's case) that if on the basis of the representation made by an assessee, the I.T.O. had treated certain loan as genuine but subsequently learnt on reliable information that such representation was either false or incorrect, the I.T.O. would have jurisdiction to initiate reassessment proceedings, because the assessee could not be said to have disclosed material facts truly and fully during the original assessment proceedings. As a matter of fact it was this divergence of opinion between the High Courts which led the High Court in the present case to grant the certificate of fitness to file an appeal in this Court. However, we need not burden this judgment by referring to different judgments of the High Courts taking one view or the other. It would be appropriate at this stage to consider the facts of Burlop's case (supra) and the law laid down therein.

18. In Burlop Dealers' case (supra) for the assessment year 1949-50, the assessee submitted a profit and loss account disclosing in the relevant year of account a sum of Rs. 1,75,875 as profit in a joint venture from H. Manory Limited (hereinafter HM) and claimed that Rs. 87,937 being half the profit earned from HM was paid to one Ratiram under a partnership agreement. According to the assessee, it had entered into an agreement with HM on June 5, 1948 to do business in plywood chests and in consideration of financing that business, the assessee was to receive 50% of the profits of the business. The assessee claimed that it had entered into an agreement with Ratiram for financing the transactions of HM in the joint venture and had agreed to pay to Ratiram 50% of the profit earned by it from the business with HM. The Income Tax Officer accepted the returns filed by the assessee and in computing the total income for the assessment year 1949-50 he included a sum of Rs. 87,937 (50% of Rs. 1,75,875) only as the profit earned on the joint venture with HM. In the assessment year 1950-51 also the assessee filed a return accompanied by a profit and loss account, disclosing total profit of Rs. 1,62,155 in the relevant accounting year received from HM and claimed that it had transferred 50% of the amount equal to Rs. 81,077 to the account of Ratiram as his share. The Income Tax Officer did not agree and held that the alleged agreement between the assessee and

Ratiram was merely a got up device to reduce the profits received from HM and brought the entire amount of Rs. 1,62,155 to tax. The order of the I.T.O. was confirmed by the Appellate Assistant Commissioner and the Income-tax Tribunal also. The High Court also agreed with the view of the Tribunal and on a reference made to it answered the question against the assessee. In the meanwhile on May 13, 1955, the Income-tax Officer issued a notice under Section 34 of the Income Tax Act, 1922 to the assessee relating to the assessment year 1949-50, intimating his intention to reopen the assessment of 1949-50, with a view to bring to tax the amount of Rs. 87,937 allegedly paid to Ratiram and allowed as a deduction in the relevant assessment year and called upon the assessee to file the return. The assessee then filed a return which did not include the amount paid to Raliram. The Income-tax Officer reassessed the income under Section 34(1)(a) and added Rs. 87,937 to the income returned by the assessee in the assessment year 1949-50. The Appellate Assistant Commissioner held that the Income-tax Officer was entitled to take action under Section 34(1)(a) of the Income-tax Act, 1922 and to reopen the assessment, since income had been under-assessed owing to the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment at the time of original assessment proceedings. He confirmed the order of the Income-tax Officer holding that the assessee had misled the Income-tax Officer into believing that there was a genuine arrangement with Ratiram. Before the Income Tax Appellant Tribunal, the assessee submitted that he had produced all the relevant accounts and documents necessary for completing the assessment during the concluded assessment proceedings and he was under no obligation to inform the Income-tax Officer as to what inferences could be drawn from the material placed before him. The Tribunal accepted the submission of the assessee and reversed the order of the Appellate Assistant Commissioner and directed that the amount of Rs. 87,937 be excluded from the total income of the assessee for 1949-50. Reference applications under Sections 66(1), 66(2) of the Indian Income-tax Act 1922 failed. The revenue Commissioner approached this Court and it was held :-

> The assessee had disclosed his books of account and evidence from which the material facts could be discovered: It was under no obligation to inform the Income Tax Officer about the possible interferences which may be raised against him. It was for the Income Tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to tax under Section 34(I)(a).

19. Thus, it is seen that in Burlop Dealers' case, apart from the Income-tax Officer holding during the assessment proceedings of the same assessee for a subsequent year, that the alleged agreement between the assessee and Ratiram was bogus, there was no other information or material from any other external source which came to the notice of the I.T.O. after the assessment proceedings which could enable the I.T.O. to form a reasonable belief that the income of the assessee had escaped assessment in the earlier year. As a matter of fact after the conclusion of the original assessment proceedings, there was no fresh material at all available with the Income-tax Officer in Burlop Dealers' case which could have enabled the I.T.O. to entertain any reason to believe that the income of the assessee had escaped assessment for the assessment year 1949-50. An assessment order for the subsequent year could not by itself lead to any inference, much less to the formation of a reasonable belief, that income chargeable to tax had escaped assessment in the previous year, on

account of the failure on the part of the assessee to make a true and full disclosure of the primary facts during the proceedings of the concluded assessment. The judgment in Burlop Dealers' case (supra), cannot be understood as laying down any such proposition that even where the I.T.O. gets some fresh information which was not available at the time of the original assessment, subsequent to the conclusion of the original assessment proceedings, which enables him to form a reasonable belief that the income of assessee had escaped assessment, because of the omission or failure of the assessee to disclose true and full facts during the assessment proceedings he cannot reopen the assessment. The observations in Burlop's case, noticed above, were made in the peculiar fact situation of that case and cannot be construed to be of universal application irrespective of the facts and circumstances of the particular case.

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

21. It would in this connection be advantageous to take note of some of the other judgment of this Court wherein the position of law on this aspect has been clearly enunciated.

22. In CIT v. TS Pl. P. Chidambaram, 80 (1971) ITR 467, relied upon by Mr. Bhatnagar, the facts were quite similar to the facts in the present case.

23. In that case, the father of the assessee, Palaniappa Chettiar, a moneylender had made various advances to one Nallathambi, a prominent landlord in Coimbatore District, on promissory notes.

For the amounts due from him, Nallathambi had executed mortgage deed of some of his properties in favour of the assessee's father. On December 14, 1940, the mortgagee instituted a suit on the basis of the mortgage deed claiming a sum of Rs. 5,50,573, inclusive of principal and interest. On September 19, 1943, the claim was compromised and on October 5, 1943, a compromise decree for a sum of Rs. 3,50,000 in full and final satisfaction of the mortgagee's claim, was decreed. That debt was subsequently discharged. For the assessment year 1944-45, the assessee as Karta of his undivided Hindu family, was assessed to income-tax on a total income of Rs. 78,556. While the assessment proceedings were pending before the Income Tax Officer, Trichy, information was received by the assessing I.T.O. from Income Tax Officer, Erode, to the effect that the mortgagor had paid secretly to the mortgagee a sum of Rs. 1,50,000 during the year ending April 9, 1944 and that the said amount had not been included in the compromise decree. On enquiry by the Income Tax Officer, Trichy, the assessee denied having received any such amount secretly. The assessment proceedings were then concluded accepting the statement of the assessee. The Assessing Officer, Trichy, however, made further enquiries into the matter and examined the party in the mortgage case, and came to the prima facie conclusion that a sum of Rs. 1,50,000 (secretly received) had escaped assessment by reason of the omission of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year 1944-45 during the original assessment proceedings. He, accordingly, issued a notice under Section 34(1)(a) of the 1922 Act (corresponding to Section 147) to the assessee. In reply to that notice, the assessee filed a return similar to the one filed earlier and denied having received Rs. 1,50,000 secretly from the mortgagor. That plea was not accepted by the I.T.O. who included the additional sum of Rs. 1,50,000 in the income of the assessee, earlier determined for the assessment year 1944-45, and taxed him accordingly. On an appeal, the Appellate Assistant Commissioner set aside the order of the Income Tax Officer and remanded the case for redoing the assessment after giving the assessee an opportunity to cross-examine the parties examined by the I.T.O., on the basis of whose statement he had come to the conclusion that a sum of Rs. 1,50,000 had been secretly paid to the mortgagee by the mortgagor. The I.T.O. after giving the necessary opportunity to the assessee made fresh order of assessment including that the sum of Rs. 1,50,000, after holding that the said sum had escaped assessment on account of the omission of the assessee to disclose truly and fully the material facts at the time of original assessment. The following three questions were referred for the opinion to the High Court.

(1) Whether assessment under Section 34 was valid and proper?

(2) Whether the Income-tax Officer rightly acted in giving effect to the order of the Appellate Assistant Commissioner setting aside the assessment to redo the same according to law after giving an opportunity to the appellant to place all his cards before the department?

(3) Whether Rs. 1,50,000 is taxable as income of the year of the account?

(p-471) The High Court answered the first two questions against the assessee and the third question against the department. Both the assessee and the revenue filed appeals.

24. On behalf of the assessee, it was urged before this Court, that since at the time when original assessment proceedings, for the relevant year, were pending before the I.T.O., he had before him

information given to him by the Income-tax Officer, Erode regarding the secret transaction and yet he did not choose to act on that information or conduct any further enquiry of investigation before concluding the assessment, it was not open to him thereafter to initiate proceedings under Section 34. A Bench of three learned Judges of this Court repelled the contention and observed thus:

> ...On the facts found by the Tribunal, it is established that the assessee's father had clearly suppressed the receipt of Rs. 1,50,000 from the mortgagor. The assessee had a duty to disclose fully and truly all material facts necessary for this assessment. Herein we are not dealing with a case coming under Section 34(1)(b). All that we have to see is whether the requirements of Section 34(1)(a) are satisfied. This Court in Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta, ruled that to confer jurisdiction on the Income-tax Officer to take action under Section 34(1)(a) two conditions must be satisfied, viz., (1) he has reason to believe that there was wider-assessment, and (2) that he must have reason to believe that the under-assessment has resulted from non-disclosure of material facts. On the facts found, under-assessment is established and it is also established that under-assessment was due to non-disclosure of material facts. There can be no doubt that at the time he issued notice under Section 34(1)(a) on the basis of the material before him, the Income-tax Officer could have formed the necessary belief. In the notice issued he says that he had formed that belief. In our opinion, the requirements of Section 34(1)(a) are fully satisfied. The fact that there was some vague information before the Income-tax Officer that the assessee's father had secretly received a sum of Rs. 1,50,000 from the mortgagor was by itself not sufficient to bring to tax that amount particularly in view of the fact that the assessee had stoutly denied that fact and the court records did not support that information. It is true that the Income-tax Officer could have made further enquiry into the matter but the fact that he did not make any further enquiry does not take the case out of Section 34(1)(a) particularly when the assessee had failed to place truly and fully all the material facts before him....

25. The above observations apply with full force to the facts of the present case and also go to show as to how the judgment in Burlop's case (supra) is required to be understood.

26. Again, in A.LA. Firm v. CIT, 189 (1991) ITR 285, a three Judges bench of this Court, to which one of us (S.C. Agrawal, J.,) was a party, after an elaborate discussion of the subject opined that the jurisdiction of the Income Tax Officer to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe, that income chargeable to tax and had escaped assessment. It was held that even if the information be such that it could have been obtained by the I.T.O. during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income Tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under Section 147 of the Act are satisfied.

27. From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true ana full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which where not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if one the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted Burlop Dealer's case (Supra) as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.

28. We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of Sections 147(a) and 148 of the Act and is against the settled law by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude.

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

order as to costs.

30. Before parting with the judgment, we would like to observe that since the appeal has remained pending in this Court since 1977, it would be in the interest of justice and fitness of things, that the assessee be granted six weeks time from today to furnish his reply to the show cause notice issued by the Income-tax Officer Azamgarh and the ITO should conclude the reassessment proceedings expeditiously. We make an order accordingly. We would like to clarify that nothing said by us hereinabove should be construed as any expression of opinion on the merits of the reassessment since we have referred to various facts and law only with a view to determine whether or not the Income-tax Officer, Azamgarh, was justified in law to initiate the reassessment proceedings under Sections 147(a) and 148 of the Income-tax Act, 1961 in the facts and circumstances of this case.