Sampat Ram Budhmal Dugar Vs Commissioner of Wealth-tax

Court: Rajasthan High Court

Date of Decision: April 14, 1986

Acts Referred: Wealth Tax Act, 1957 â€" Section 17(1)

Citation: (1986) 56 CTR 331 : (1987) 164 ITR 178 : (1987) 1 WLN 39

Hon'ble Judges: S.C. Agrawal, J; I.S. Israni, J

Bench: Division Bench

Advocate: Rajesh Balia, for the Appellant; B.R. Arora, for the Respondent

Judgement

S.C. Agrawal, J.
In this reference made by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as ""the

Tribunal""), u/s 27 of the Wealth-tax Act, 1957 (hereinafter referred to as ""the Act""), the following question has been referred for the opinion of this

court:

Whether, on the facts and in the circumstances of these cases, the Tribunal was right in holding that action u/s 17(1)(a) was validly initiated by the

Wealth-tax Officer in respect of assessment years 1964-65 to 1967-68 and that reassessment orders passed as a result of such initiation were

valid ?

2. The facts as stated in the statement of the case sent by the Tribunal are briefly as under :

M/s. Sampatram Budhmal Dugar, the assessee herein, is a Hindu undivided family consisting of Shri Jabharmal, his adoptive mother Smt. Dhanni

Devi, and his wife and children. Originally, there was a joint Hindu undivided family constituted by Shri Budhmal Dugar and his brother Shri

Sumermal. In the year 1930, Budhmal and Sumermal had purchased silver weighing about 430 kgs. and the same was kept in the haveli belonging

to the family situated at Sardarshahar. In 1938, a partition took place between these two brothers and as a result of the said partition, the haveli

belonging to the family situated in Sardarshahar came to the share of Budhmal. Budhmal died in the year 1954 and some time after his death, his

widow, Smt. Dhanni Devi, adopted Jabharmal, who was a minor at that time. In the year 1968, Jabharmal decided to demolish a part of the haveli

facing on to the right side for the purpose of constructing shops and while the said demolition was going on, the workmen found 21 bars of silver

weighing about 430 kgs. lying buried in a kottri of the haveli on August 13, 1968. On August 16, 1968, 25 gold pieces weighing 783 1/4 tolas

were found in an ""arch"" while breaking the roof of the room adjacent to the kothari in which silver bars and pieces were discovered. On August

20, 1968, Jabharmal wrote a letter to the Gold Control Administrator, New Delhi, bringing to his notice the aforesaid finds in the house. In the said

letter he stated that neither he nor any other member of the family including his adoptive mother, had any prior knowledge whatsoever about the

existence of the aforesaid gold and silver before their discovery. The statement of Jabharmal was recorded by the Central Excise authorities on

December 20, 1968, and by the Income Tax Officer on August 28, 1972. In both these statements, Jabharmal stated that neither Shri Sumermal

nor Smt. Dhanni Devi had ever earlier told him about the hidden silver or gold and that he came to know of their existence only when they were

dug out and that when he informed Shri Sumermal and Smt. Dhanni Devi in 1968 about the discovery of gold and silver, he was told by Shri

Sumermal that the aforesaid silver fell to his father''s (Budhmal) share at the time of partition and that about the gold even Shri Sumermal had no

knowledge of its existence in the haveli and that it must have been kept there by some of his forefathers. Statements of Shri Sumermal were also

recorded on.December 15, 1968, and December 20, 1968. The statement of Smt. Dhanni Devi was also recorded on December 15, 1968. She

also filed an affidavit dated August 26, 1972, before the Income Tax Officer. By order dated June 10, 1969, the Superintendent of Central Excise

released the gold and silver which had been seized, to the assessee after recording a finding that the gold was more than 100 years old and that

neither the assessee nor any other member of the family was aware of the existence of this gold. As regards the silver bars, the Excise authorities

did not carry out any detailed investigation and the silver was released to the assessee on the short ground that it was not shown to have been

imported into India in contravention of the prohibition imposed by law.

3. The wealth-tax returns for the assessment years 1964-65, 1965-66, 1966-67 and 1967-68 had been filed prior to the aforesaid discovery of

silver and gold and the assessment for these years had been completed prior to the said discovery. The assessee included the value of the silver in

the wealth-tax returns for the assessment year 1968-69 and for the subsequent years. On March 27, 1973, the Wealth-tax Officer, Chum

(hereinafter referred to as ""the Wealth-tax Officer"") issued a notice u/s 17(3) of the Act for reopening the wealth-tax assessment of the assessee

for the years 1964-65, 1965-66, 1966-67 and 1967-68 on the view that he was of the opinion that the version which was given by Sumermal and

Jabharmal was not correct and that Jabharmal all along knew of the existence of silver and that the above wealth which was admittedly of the

assessee family had escaped assessment due to omission or failure on the part of Jabharmal to disclose the material particulars of his family''s

wealth. The assessee pleaded before the Wealth-tax Officer that whatever wealth belonged to the family as known to him at the time of the filing of

the original return was disclosed by him in the said returns and the wealth consisting of silver bars came to his knowledge only in August, 1968,

when part of the haveli belonging to the family was demolished and that what the assessee did not know at the time of the filing of the returns could

not have been admitted by him when he filed the original returns and it could not, therefore, be said of the assessee that he did not disclose fully

and truly all the material facts as known to him till then, when he filed the returns and, therefore, action could not be initiated against the assessee

u/s 17(1) of the Act in respect of the aforesaid alleged omission or failure of the assessee to declare the silver in the wealth-tax returns. In

pursuance of the said notices, the assessee filed the returns for the assessment years 1964-65, 1965-66, 1966-67 and 1967-68 and in the said

returns, the assessee declared the value of the silver discovered in the residential house but did not declare the value of the gold so discovered on

the ground that it belonged to the bigger Hindu undivided family. The Wealth-tax Officer passed assessment orders on January 10, 1974, wherein

he included the value of gold and silver for assessing the total wealth of the assessee. The assessee filed appeals against the aforesaid assessment

orders passed by the Wealth-tax Officer. The said appeals were disposed of by the Appellate Assistant Commissioner of Income Tax, Bikaner

Range, Bikaner (hereinafter referred to as the Appellate Assistant Commissioner) by his order dated March 31, 1975. The Appellate Assistant

Commissioner found that the possession of gold was neither in the knowledge of Jabharmal nor of his mother but the existence of silver was within

the knowledge of Smt. Dhanni Devi and Sumermal and that Budhmal had informed Smt. Dhanni Devi about the existence of the silver and the

place where it had been kept and since Smt. Dhanni Devi happens to be the adoptive mother of Jabharmal, the karta of the Hindu undivided

family, she must have passed on the necessary information about the silver bars to her son and that since the assessee is assessed in the status of a

Hindu undivided family and Smt. Dhanni Devi is a member of the joint Hindu undivided family, her knowledge is enough to bring the appellant''s

case within the provisions of Section 17(1) of the Act. The Appellate Assistant Commissioner, however, excluded the value of the gold from the

wealth of the assessee, as assessed by the Wealth-tax Officer. The assessee filed appeals before the Tribunal.

4. In the Tribunal, a difference of opinion arose between the two members who heard the appeals of the assessee. The learned Accountant

Member held that the probabilities of the case and of the ordinary human conduct would justify the inference that Budhmal should have told his

wife, if not at the time of partition but at the time of his death, that apart from the wealth of the family which was above the ground and within her

knowledge, silver weighing about 430 legs, which had been buried in 1930 in the said haveli and about which Smt. Dhanni Devi had the

knowledge, had also come to his share and that it constituted the wealth of the family and in the normal course, Smt. Dhanni Devi should have

informed Jabharmal, her adopted son, about the wealth of the family including the buried wealth. The learned Accountant Member was, therefore,

of the opinion that the family had knowledge about the wealth in the form of the buried silver and had yet not furnished the information about it in

the original returns and due to this omission it had escaped assessment and as such action u/s 17(1)(a) of the Act was rightly initiated. The learned

Judicial Member, on the other hand, took the view that the probabilities of the case suggested that Jabharmal did not have any knowledge about

the buried silver and that, therefore, he could not have shown it in the original returns filed by him and as such it could not be said that

underassessment had taken place on account of the failure or omission on the part of the assessee to furnish the material information at the time of

the original assessment.

5. In view of the aforesaid difference of opinion amongst the two members of the Tribunal who had heard the appeals, the President of the Tribunal

referred to a third Member of the Tribunal, the following three questions representing the points of difference of opinion between the two learned

Members of the Tribunal :

1. Whether, on the facts and in the circumstances of the case, there was material before the learned Wealth-tax Officer to initiate proceedings u/s

of the Wealth-tax Act, 1957, in respect of assessment years 1964-65, 1965-66, 1966-67 and 1967-68 ?

2. Whether, on the facts and in the circumstances of the case, the learned Appellate Assistant Commissioner of Wealth-tax was justified in holding

that the assessee had knowledge about the existence and his ownership of silver bars in the assessment years under consideration ?

3. Whether, on the facts and in the circumstances of the case, the authorities below were justified in including the value of the silver bars in question

in the net wealth of the assessee pertaining to the assessment years 1964-65 to 1967-68?

6. The appeals were thereafter heard by the Vice President of the Tribunal as the third Member. The learned third Member agreed with the

Judicial Member and held that as Jabharmal was not aware of the existence of the silver, he had not omitted or failed to disclose these assets and,

therefore, he answered the second question in the negative. The learned third Member was of the view that notwithstanding the aforesaid

conclusion in favour of the assessee on merits, the assumption of jurisdiction by the Wealth-tax Officer u/s 17(1)(a) of the Act could not be

challenged inasmuch as in the set of circumstances that confronted the Wealth-tax Officer, it was possible for him to draw an inference that

Jabharmal had been aware much earlier about the existence of the silver also and that it was, therefore, possible for the Wealth-tax Officer to have

drawn in good faith an inference that the escapement of net wealth was attributable to the non-disclosure by the assessee of material facts. In view

of the aforesaid findings, the learned third Member answered the first and the third questions referred to him in the affirmative and upheld the

initiation of the reassessment proceedings and the inclusion of the value of silver bars.

7. The assessee thereupon moved the Tribunal u/s 27(1) of the Act for referring for the opinion of this court the questions of law arising out of the

order of the Tribunal and on that application of the assessee, the Tribunal has referred the question mentioned above for the opinion of this court.

8. Before we deal with the submissions of Shri Balia, learned counsel for the assessee, and Shri Arora, learned counsel for the Revenue, we may

take note of the provisions contained u/s 17 of the Act which reads as under :

17. (1) If the Wealth-tax Officer-

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net

wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts

necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped

assessment for that year, whether by reason of underassessment or assessment at too low a rate or otherwise; or

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is

referred to in Clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or

assessment at too low a rate or otherwise ;

he may, in cases falling under Clause (a) at any time within eight years and in cases falling under Clause (b) at any time within four years of the end

of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under subsection

(2) of Section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the

notice had issued under that Sub-section.

(2) Nothing contained in this Section limiting the time within which any proceeding for assessment or reassessment may be commenced, shall apply

to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order

under Sections 23, 24, 25, 27 or 29 :

Provided that the provisions of this sub-section shall not apply in any case where any such assessment or reassessment relates to an assessment

year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject-matter of the

appeal, reference or revision, as the case may be, was made by reason of any provision limiting the time within which any action for assessment or

reassessment may be taken.

9. The aforesaid provisions contained in Section 17 of the Act are similar to those that were contained in Section 34 of the Indian Income Tax Act,

1922, and those contained in Sections 147, 148 and 149 of the Income Tax Act, 1961. In the Income Tax Act, 1961, there is a further

requirement that the Income Tax Officer, before issuing a notice for reassessment, shall record his reasons for doing so and in cases where the

notice is issued after the expiry of 4 years from the end of the relevant assessment year the Commissioner must also be satisfied on the reasons

recorded by the Income Tax Officer that it is a fit case for the issuance of such notice. The provisions contained in Clauses (a) and (b) of Sub-

section (1) of Section 17 of the Act and Clauses (a) and (b) of Sub-section (1) of Section 34 of the Indian Income Tax Act, 1922, and Clauses

(a) and (b) of Section 147 of the Income Tax Act, 1961, are, however, substantially the same.

10. The provisions contained in Clause (a) of Sub-section (1) of Section 34 of the Indian Income Tax Act, 1922 and Clause (a) of Section 147 of

the Income Tax Act, 1961, have come up for consideration before the Supreme Court in a number of cases in appeals arising out of petitions filed

under article 226 of the Constitution as well as in references made under the provisions of the Income Tax Act.

11. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , the Supreme Court has considered the

provisions of Section 34(1)(a) of the Indian Income Tax Act, 1922, in an appeal arising out of a petition filed under article 226 of the Constitution.

In that case, Das Gupta J., speaking for the majority, has held as under (at page 199):

To confer jurisdiction under this Section to issue notice in respect of assessments beyond the period of four years, but within a period of eight

years, from the end of the relevant year, two conditions have, therefore, to be satisfied. The first is that the Income Tax Officer must have reason to

believe that income, profits or gains chargeable to Income Tax have been underassessed. The second is that he must have also reason to believe

that such "underassessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income u/s

22, or (ii) omission or failure on the part of an 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 for the assessment

or reassessment beyond the period of four years, but within the period of eight years, from the end of the year in question.

12. After examining the precise scope of disclosure which the section demands, the hon"ble Judges have observed (at pages 201 and 202):

The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any

primary fact, which could have a material bearing on the question of "underassessment", that would be sufficient to give jurisdiction to the Income

Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non-disclosure

of material facts would not be open for the court"s investigation. In other words, all that is necessary to give this special jurisdiction is that the

Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material

facts.

13. In that case, the learned judges found that the assessee had disclosed all the material facts and that the Income Tax Officer who issued the

notice had not before him any non-disclosure of a material fact and so he could have no material before him for believing that there had been any

material non-disclosure by reason of which an underassessment had taken place and, therefore, the conditions precedent to the exercise of

jurisdiction u/s 34 of the Income Tax Act did not exist and the Income Tax Officer had, therefore, no jurisdiction to issue the impugned notice u/s

34. The learned judges, rejected the contention urged on behalf of the Revenue that the question whether the Income Tax Officer had reason to

believe that underassessment had occurred by reason of nondisclosure of material facts should not be investigated by the courts in an application

under article 226 and have observed that (at page 207):

Both the conditions, (i) the Income Tax Officer having reason to believe that there has been underassessment and (ii) his having reason to believe

that such underassessment has resulted from non-disclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start

proceedings after the expiry of 4 years.

14. In S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, the Supreme Court, while dealing with the provisions contained

in Section 34(1)(a) of the Income Tax Act, 1922, has observed (at pages 221 and 222):

It is true that two conditions must be satisfied in order to confer jurisdiction on the Income Tax Officer to issue the notice u/s 34 in respect of

assessments beyond the period of four years, but within a period of eight years from the end of the relevant year. The first condition is that the

Income Tax Officer must have reason to believe that the income, profits or gains chargeable to Income Tax had been underassessed. The second

condition is that he must have reason to believe that such ''underassessment'' had occurred by reason of either (i) omission or failure on the part of

an assessee to make a return of his income u/s 22 or (ii) omission or failure on the part of the assessee to disclose fully and truly all the material

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

acquires jurisdiction to issue a notice under the section. But the legal position is that if there are in fact some reasonable grounds for the Income-tux

Officer to believe that there had been any nondisclosure as regards any fact, which could have a material bearing on the question of

underassessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice u/s 34.

15. It was further observed fat page 222):

It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In

other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression

''reason to believe '' in Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The

belief must be held in good faith ; it cannot be merely a pretence. To put it differently, it is open to the court to examine the question whether the

reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the

purpose of the section. To this limited extent, the action of the Income Tax Officer starting proceedings u/s 34 of the Act is open to challenge in a

court of law.

16. This was a case arising out of a reference made by the Income Tax Appellate Tribunal to the High Court.

17. The same view was reiterated by the Supreme Court in Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer,

Rajahmundry,

18. In Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, the Supreme Court has observed : (at page 153):

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 circumstantial evidence but not on mere suspicion, gossip or

rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his 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 or sufficiency of the

reasons for the belief cannot be investigated by the court.

19. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the Supreme Court, in an appeal arising out of a petition under article

226 of the Constitution, has reiterated the principles laid down in its earlier decisions in Calcutta Discount Company Limited Vs. Income Tax

Officer, Companies District, I and Another, and S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, and has further

observed (at page 448):

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 his 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 assessment. At the

same time we 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 powers of the Income Tax

Officer to reopen 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.

20. In that case the Supreme Court found that the link or close nexus which should be there between the material before the Income Tax Officer

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 material facts, was missing and that in any event the link was too tenuous to provide a legally sound basis for

reopening the assessment and, therefore, the said material could not have led to the formation of the belief that the income of the assessee

respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts.

21. In Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, in an appeal arising out of a reference made by the Income Tax

Appellate Tribunal, the Supreme Court has considered the provisions of Section 147(a) of the Income Tax Act, 1961, and has observed as under

(at page 11):

It is well settled as a result of several decisions 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 invalid.

22. In that case, the Supreme Court held that it was not possible to sustain the conclusion arrived at by the Income Tax Officer that the assessee

had omitted or failed to disclose fully and truly material facts relating to its assessment and the court, therefore, held that neither of the two

conditions necessary for attracting the applicability of Section 147(a) was satisfied and the notice issued by the Income Tax Officer was, therefore,

held to be without jurisdiction.

23. In view of the decisions of the Supreme Court referred to above, it must be held that for a valid exercise of the jurisdiction conferred upon him

u/s 17(1)(a) of the Act, it is necessary that the Wealth-tax Officer must have (i) reason to believe that net wealth chargeable to tax has escaped

assessment, and (ii) reason to believe that such escapement of the wealth of the assessee from assessment has occurred by reason of either (a)

omission or failure on the part of the assessee to make a return, or (b) omission or failure on the part of the assessee to disclose frilly and truly all

material facts necessary for assessment for that year. The action of the Wealth-tax Officer would be invalid if the reason for his belief that the

conditions are satisfied does not exist or is not material or relevant to the belief required by the Section. Rational connection postulates that there

must be a direct nexus or live link between the material coming to the notice of the Wealth-tax Officer and the formation of his belief that there has

been escapement of the wealth of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material

facts. In other words, if, on the basis of the material coming to the notice of the Wealth-tax Officer till the date he issued the notice u/s 17(1)(a) of

the Act, it can be said that the reasons for his belief that the conditions are satisfied were non-existent or were arbitrary or irrational, the action

taken by the Wealth-tax Officer must be held to be invalid.

24. In the present case, we have to determine as to whether the action of the Wealth-tax Officer in issuing notices to the assessee u/s 17(3) of the

Act can be upheld on the basis of the principles referred to above.

25. Shri Balia, learned counsel for the assessee, has urged that in view of the findings recorded by the learned third Member of the Tribunal that

Jabharmal was not aware of the existence of the silver at the time he filed the returns for the assessment years 1964-65, 1965-66, 1966-67 and

1967-68, it could not be said that the assessee had omitted or failed to disclose a material fact and thus one of the conditions precedent for the

exercise of jurisdiction under s. 17(1)(a) of the Act was absent in the present case and that the proceedings had not been validly initiated under s.

17(1)(a) of the Act. According to Shri Balia, the present case falls within the ambit of Clause (b) of Sub-section (1) of s. 17 (and since the period

of four years) had expired on March 27, 1973, the date of the issuance of the notices, no proceedings for reassessment of the wealth could be

validly initiated against the assessee u/s 17 of the Act. In this connection, Shri Balia had urged that the omission or failure by an assessee to

disclose a material fact postulates the knowledge on his part of the said fact at the time of the alleged omission or failure and in case where the

assessee is not aware of the fact at the time of making the return, it cannot be said that he had omitted or failed to disclose the said fact in the

return. Shri Balia has also submitted that the learned third Member has found that there was no failure or omission on the part of the assessee to

disclose a material fact and that in view of the said finding, he was not right in holding that the proceedings had been validly initiated by the Wealth-

tax Officer u/s 17 of the Act against the assessee. In this connection, Shri Balia has contended that all the material on the basis of which the

Wealth-tax Officer formed the belief that the assessee had knowledge about the existence of silver in the haveli at the time of filing of the return for

the relevant assessment years and had thereby omitted and failed to disclose this material fact has been considered by the Judicial Member and the

third Member of the Tribunal and on the basis of the said material, they have come to the conclusion that the assessee was not aware of the fact

that silver was lying in the haveli. In view of the aforesaid finding recorded by the Judicial Member and the third Member on the basis of the

material which was taken into consideration by the Wealth-tax Officer for issuing the notices u/s 17(3) of the Act, it must be said that it was not

possible for the Wealth-tax Officer to come to the conclusion that the assessee was aware of the existence of the silver at the time of the filing of

the returns and, therefore, the said reason given by the Wealth-tax Officer, namely, omission or failure to disclose the material fact in the return

must be held to be non-existent and in that event the action of the Wealth-tax Officer in issuing notices u/s 17(3) of the Act was without

jurisdiction.

26. Shri Arora, learned counsel for the Revenue, has supported the line of reasoning of the learned third Member of the Tribunal and has submitted

that in spite of the finding of the Judicial Member and the third Member that the assessee was not aware of the presence of the silver in the haveli at

the time when he filed the returns for the relevant assessment years, the action of the Wealth-tax Officer in issuing the notices u/s 17(3) of the Act

could not be assailed for the reason that on the basis of the materials before him at the time when he issued the said notices, the Wealth-tax Officer

could reasonably believe that the assessee had such a knowledge.

27. Having given our thoughtful consideration to the aforesaid submissions we are of the view that the submissions urged by Shri Balia on behalf of

the assessee must be accepted. It is well settled that the omission or failure to disclose fully or truly a material fact postulates the knowledge of the

said fact at the relevant time and a person cannot be held guilty of omission or failure to disclose a fact of which he had no knowledge. In this

connection reference may be made to the decision of the Division Bench of the Calcutta High Court in P.R. Mukherjee Vs. Commissioner of

Income Tax, West Bengal, wherein the learned Judges have construed the words ""omission or failure.....to disclose fully and truly all material facts

contained in Clause (a) of Sub-section (1) of Section 34 of the Income Tax Act, 1922. The learned Judges have observed as under (at p. 544):

The words I have just quoted may, in one view, cover a bare omission or failure to mention all material facts and, in another view, they may be

said to cover only the case where the assessee, knowing all the material facts, does not mention them fully or truly or, in other words, deliberately

withholds information or full information. Support for the second view would seem to be afforded by the grammatical meaning of the words

''omission'', ''failure'' and ''disclose.'' It may well be said, and I should think, said correctly, that a person cannot be said to have omitted or failed to

disclose something when, of such thing, he had no knowledge. A similar implication is carried by the word ''disclose'', because one cannot be

expected to disclose a thing or said to have failed to disclose it, unless it is a matter which he knows or knows of. Of the two meanings of the

relevant words in Clause (a), I, as at present advised, should think that the second is the correct view.

28. In E. M. Muthappa Chettiar Vs. Commissioner of Income Tax, Madras, decided by a Division Bench of the Madras High Court, with

reference to the provisions contained in Section 34(1)(a) of the Indian Income Tax Act, 1922, it has been held that (at p. 649) :

The foundation of a proceeding under this clause is the suppression by the assessee of material facts necessary for assessment. In the collocation

of the words of the statute, it seems to us that the omission or failure must have been deliberate and wilful.

29. In M. O. THOMAKUTTY Vs. COMMISSIONER OF Income Tax, KERALA., the Kerala High Court has taken the same view and has

observed (at p. 882):

There is nothing to indicate that at the time the assessee filed his return his accounts relating to his Cochin business had been completed and that

he knew exactly what his income was from that business. In the return he had only estimated that income to the best of his belief. The fact that

when the accounts were finally closed it was seen that the income was actually much more, is not sufficient to hold that the assessee had not truly

and fully disclosed his income unless there is material to show that the assessee knew at the time he submitted his return that his income was not

that which was estimated by him.

30. In Commissioner of Income Tax, Bombay Vs. Balvantrai S. Jain, the Bombay High Court has taken the same view following the decisions of

the Calcutta, Kerala and Madras High Courts referred and has observed (at p. 71):

A person cannot be said to have omitted or failed to disclose a fact if he had no knowledge of that fact. The words ''omission or failure to disclose

fully and truly all material facts'' in Clause (a) of Section 34(1) of the Income Tax Act cover only the case where the assessee knowing all the

material facts does not mention them fully and truly, in other words, where he deliberately withholds information.

31. The same view has been taken in Ganesh Chandra Khan Vs. Income Tax Officer, ""A"" Ward and Another, and Income Tax Officer, ''G'' Ward

and Others Vs. Selected Dalurband Coal Co. P. Ltd.,

32. Thus it can be said that the assessee cannot be said to have omitted or failed to disclose the fact about the possession of the silver at the time

of filing of the returns and completion of the assessment for the relevant assessment years because till August 13, 1968, the assessee had no

knowledge of the presence of the silver in the haveli as found by the Judicial Member and the learned third Member of the Tribunal.

33. The question which next arises is whether in spite of the finding that the assessee has not omitted or failed to disclose the material fact about his

being in possession of the silver, the action of the Wealth-tax Officer in issuing notices u/s 17(3) of the Act can be upheld. We find ourselves

unable to agree with the reasoning given by the learned third Member of the Tribunal that the action of the Wealth-tax Officer in assuming

jurisdiction u/s 17(1)(a) of the Act could not be challenged because it was possible for the Wealth-tax Officer to have drawn in good faith an

inference that the escapement of net wealth was attributable to the non-disclosure by the assessee of the material facts. In our opinion, the

existence of the belief of the Wealth-tax Officer that the net wealth chargeable to tax had escaped assessment by reason of the omission or failure

on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the net wealth, which is a condition

precedent for taking action u/s 17(1) of the Act, is open to challenge and in the present case in view of the finding recorded by the Judicial

Member and the learned third Member, it must be held that there was no omission or failure on the part of the assessee to disclose the fact with

regard to the possession of silver by the assessee at the time of filing of the returns. This finding has been recorded by the Judicial Member and the

learned third Member on the basis of the material which was before the Wealth-tax Officer at the time when he issued the notices u/s 17(3) of the

Act. This would mean that on the basis of the material that was before him at the time when he issued the notices it was not possible to form the

belief that the assessee had knowledge about the presence of silver in the haveli and he had omitted or failed to das-close this material fact in

return. In other words, the aforesaid condition, namely, omission or failure on the part of the assessee to disclose a material fact was non-existent

and in the absence of the aforesaid condition, it was not possible for the Wealth-tax Officer to arrive at a reasonable belief that the net wealth

chargeable to tax had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material

facts necessary for assessment of the net wealth. For the reasons aforesaid, we are of the opinion that the proceedings that were initiated against

the assessee by the Wealth--tax Officer u/s 17(1)(a) of the Act by issuing notices u/s 17(3) of the Act were invalid. It must, therefore, be held that,

in the facts and circumstances of the case, the Tribunal was not right in holding that the action u/s 17(1)(a) was validly initiated by the Wealth-tax

Officer in respect of the assessment years 1964-65 to 1967-68 and that the reassessment orders passed as a result of such initiation were valid.

34. The question referred is, therefore, answered in the negative, i.e., in favour of the assessee and against the Revenue. In the facts and

circumstances of the case, the parties are left to bear their own costs.