(1987) 01 AHC CK 0026

Allahabad High Court

Case No: Income-tax Reference No. 1141 of 1977

Additional Commissioner of Income Tax		APPELLANT
	Vs	
Hasmat Rai Raj Pal		RESPONDENT

Date of Decision: Jan. 22, 1987

Acts Referred:

- Income Tax Act, 1961 - Section 147, 297(2)

Citation: (1987) 61 CTR 256 : (1987) 32 TAXMAN 72

Hon'ble Judges: R.K. Gulati, J; K.C. Agrawal, J

Bench: Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad Bench, Allahabadi has referred the following two questions of law for the opinion of this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act "):

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that there was no failure on the part of the assessee to disclose fully and truly all the material necessary for the completion of the assessment for the assessment year 1960-61 ?

(2) Whether the Tribunal was legally correct in holding that the income, if addable at all, could have been added for the assessment year 1961-62 but not for the assessment year 1960-61?"

2. The respondent, M/s Hasmat Rai Raj Pal (hereinafter called as "the assessee"), is a registered firm. Its previous year is the year ending on 31st October. It maintained regular books of account. The assessee had some hundi transactions which were found recorded in its books maintained for the assessment year 1961-62. During the course of assessment proceedings before the Income Tax Officer for the assessment year 1961-62, the assessee filed a copy of the accounts of the creditors as appearing in the ledger with their addresses. The Income Tax Officer sent an

intimation slip to the Income Tax Officer under whose jurisdiction the creditors were doing business. He did not wait for the reply from the Income Tax Officer concerned and completed the assessment on November 29, 1961.

3. In this reference, we are concerned with the assessment year 1960-61. The original assessment for this year was completed much earlier on February 2, 1961.

4. The assessments for both the years mentioned above were completed under the provisions of the Indian Income Tax Act, 1922 (hereinafter referred to as " the Act of 1922 ").

5. Subsequently, after the completion of the above assessments, the assessing officer got information that the loans could not be verified ; in fact, the creditors had been treated as bogus hundi brokers by the Income Tax Officer, Hundi Circle.

6. From the statement of the case submitted by the Tribunal, it appears that the Income Tax Officer, amongst other information, had also received copies of the statements of the creditors recorded on oath. All the creditors had confessed that the transactions in their names were benami. On receipt of this information, the Income Tax Officer recorded his reasons and came to the conclusion that, in his opinion, he has reason to believe that the income for these two years had escaped assessment within the meaning of Section 147(a) of the Act. He, therefore, issued notices u/s 148 of the Act.

7. Initially, the assessment for the year 1961-62 was reopened. Subsequently, he took similar action for the assessment year 1960-61 as two of the hundi credits, which were found recorded in the assessee''s books maintained for 1961-62, each amounting to Rs. 25,000 were shown credited on November 21, 1959, a date falling within the financial year relevant to the assessment year 1960-61.

8. The Income Tax Officer called upon the assessee to prove the genuineness of the various hundi loans. The Income Tax Officer, not being satisfied with the explanation given by the assessee, in due course, brought to tax the aforesaid two credits as income of the assessee from undisclosed sources in the assessment year 1960-61. In framing this assessment, he took the financial year as the previous year to assess the income from undisclosed sources instead of taking the previous year followed by the'' assessee ending on 31st October. On a similar basis, other hundi loans were, likewise, brought to tax in the assessment year 1961-62 with which we are not concerned in this reference.

9. The assessee went up in appeal and took up the stand that since confirmatory letters from the creditors together with the discharged hundis had been filed by it, the statements of the creditors could not be used against it without affording an opportunity of cross-examining them. The Appellate Assistant Commissioner, while noticing the assessee''s argument, held that since the action for reassessment had been taken beyond a period of four years, the reassessment order was not liable to

be sustained in view of the decision of the Supreme Court in Chhugamal Rajpal Vs. S.P. Chaliha and Others, .

10. When the matter went before the Income Tax Appellate Tribunal, by way of an appeal at the instance of the Department, the assessee raised an additional plea before it to the effect that no part of the two hundi credits could validly be assessed in the assessment year 1960-61, but could only, if at all, be assessed in the assessment year 1961-62, having regard to the provisions contained in Section 297(2)(d)(ii) of the Act of 1961. The precise argument of the assessee was that since the action for reassessment was taken u/s 148 of the Act of 1961 and the reassessment was also completed under that Act, assuming the two credits represented income from undisclosed sources, it could only be assessed in the assessment year corresponding to the previous year on the basis of which it maintained its books and the credits were found recorded. In other words, the assessee''s case was that the disputed amount could be brought to tax only in the assessment year 1961-62. In support of its case, the assessee relied upon the words " all the provisions of this Act shall apply accordingly " used in Section 297(2)(d)(ii) of the Act.

11. The stand taken by the assessee was resisted by the Revenue. According to it, the phrase " all the provisions of this Act shall apply accordingly " meant only the machinery provisions and within the ambit of those words the substantive provisions of the Act of 1961 were not included. As per the Department, income from undisclosed sources could only be assessed in accordance with the provisions of the Act of 1922 and thus the reassessment made by the Income Tax Officer was valid.

12. The Income Tax Appellate Tribunal, while confirming the order of the Appellate Assistant Commissioner recorded three findings, namely :

(i) there was no failure or omission on the part of the assessee to make full and true disclosure of its income ;

(ii) there was no material in the possession of the Income Tax Officer on which he could have reason to believe that any income of the assessee had escaped assessment; and

(iii) having regard to the provisions contained in Section 297(2)(d)(ii) of the Act, the impugned two deposits could only be assessed in the year 1960-61.

13. It is in this background, the aforesaid two questions have been referred to us for our opinion.

14. So far as question No. 2 is concerned, the material finding recorded by the Tribunal is to the following effect:

"Thus it is clear that in all cases referred to in Section 297(2)(d)(ii), the substantive provisions of the 1961 Act had to be applied if the assessment is made u/s 148 of the Act. No proceedings were pending u/s 34 of the Act of 1922. The proceedings for the assessment years 1960-61 and 1961-62 have been started u/s 148 of the Act of 1961. Therefore, the substantive provisions of the Act of 1961 would apply.

The argument of the Revenue is not correct that the substantive provisions of the Act of 1922 and procedural provisions of Act of 1961 would apply. The assessee maintained books of account on the basis of which the cash credits were found which, in the opinion of the Income Tax Officer, were not satisfactorily explained. Therefore, if the income was addable at all, he could have added it for the assessment year 1960-61. On this ground even the addition on merits for the assessment year 1960-61 fails."

15. The Act of 1922 was repealed by Section 297(1) of the Act of 1961. Sub-section (2) of Section 297, by its various clauses, provides for certain savings and other contingencies. In this reference, we are concerned with Clause (d)(ii) of that sub-section. The relevant provisions of that clause are to the following effect:

"(d) wherein respect of any assessment year after the year ending on the 31st day of March, 1940,--...

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings u/s 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice u/s 148 may, subject to the provisions contained in Section 149 or Section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly."

16. In view of the decision of the Supreme Court in Govind Das and Others Vs. The Income Tax Officer and Another, , the view taken by the Income Tax Appellate Tribunal cannot be sustained. While construing the provisions of Section 297 and the phrase "all the provisions of this Act shall apply accordingly" used in that section, the Supreme Court has held as under (at page 134):

" These words merely refer to the machinery provided in the new Act for the assessment of escaped income. They do not import any substantive provisions of the new Act which create rights or liabilities. The word ''accordingly'' in the context means nothing more than ''for the purpose of assessment'' and it clearly suggests that the provisions of the new Act which are made applicable are those relating to the machinery of assessment. The substantive law to be applied for determining the liability to tax must necessarily be the law under the old Act, for that is the law which applied during the relevant assessment years and it is that law which must govern the liability of the parties. "

17. For what has been said above, it must be held that the words "all the provisions of this Act shall apply accordingly "used in Section 297(2)(d)(ii) mean only the procedural provisions. It follows that the substantive provisions of the Act of 1961 will not apply to the completion of an assessment relating to an assessment year prior to the coming into force of the Act of 1961 provided the other conditions contained in Section 297(2)(d)(ii) are satisfied.

18. The Income Tax Appellate Tribunal, having taken an erroneous view as to the scope of Section 297, did not examine the relevant provisions of the Act of 1961 relating to the assessability of income from an undisclosed source. In this view of the matter, it is not necessary to examine whether those provisions are substantive or procedural in nature, for this part of the case does not arise out of the Tribunal''s order.

19. However, under the Act of 1922, the position with regard to the assessability of income from an undisclosed source is well settled in view of the decision of the Supreme Court in Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh, . According to this decision, income from an undisclosed source under the said Act would normally be assessed or reassessed in any assessment year taking the financial year as its previous year. The previous year adopted by the assessee for its business income had no relevance. Accordingly, the Income Tax Appellate Tribunal was wrong when it held that the two impugned deposits could be assessed in the assessment year 1961-62.

20. During the course of hearing, we were referred to Section 68 of the Act of 1961. This section provides that where any sum is found credited in the books of an assessee for any previous year and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him, is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited, may be charged to Income Tax as the income of the assessee of that previous year. Several decisions of various High Courts were also brought to our notice, in which the unanimous view taken is that the provisions contained in Section 68 of the Act of 1961 are substantive in nature (See Krishan Oil Cake Industries Vs. S.R. Patankar, Assistant Collector of Customs and others, , Commissioner of Income Tax Vs. Dharamchand Anand Kumar, , Commissioner of Income Tax Vs. Kashiram Agrawalla, and Commissioner of Income Tax (Central), Bombay Vs. Ambaji Traders Pvt. Ltd., .

21. Relying on these decisions, learned standing counsel for the Department urged that the assessment as found by the assessing officer was perfectly in order. As stated earlier, it is not necessary for us to analyse the provisions of Section 68 of the Act and we accordingly refrain from going into the matter.

22. We will now take up question No. 1. As stated earlier, all the hundi credits including the two assessed in the year 1960-61 were found recorded in the account books of the assessee maintained for the assessment year 1961-62. It was during

the course of the original proceedings for this year that the assessee may have brought on record the names and addresses of the creditors. In the original proceedings relating to the year 1960-61, no disclosure, much less full and true, was made with respect to the two hundi loans which were brought to tax in the reassessment proceeding for the year 1960-61. The assessee''s case was that it was not bound to make any disclosure in proceedings for the year 1960-61 as the credits did not appear in its books maintained for that year. Another argument of the assessee was, it having disclosed the loans as per its books in the year 1961-62, it amounted to full and true disclosure as contemplated by Section 147(a) of the Act for the assessment year 1960-61. The Tribunal was impressed by these arguments and held as follows:

"We do not agree with the contention of the Revenue. The assessment for 1960-61 was not an underassessment. All the credits were found in the books of the assessee for the assessment year 1961-62 and, therefore, he could only produce the material for the year in which these cash credits appeared. He could not submit any particulars for the year in which these credits did not appear. It has also been found that the assessee produced all the details of the creditors, their names and addresses, and..... Under the circumstances, we are quite satisfied that the Appellate Assistant Commissioner was justified in annulling the assessment for the year 1960-61."

23. As would appear from the above, a two-fold finding has been recorded, namely, the assessee was not bound to disclose the deposits which appeared in its account books maintained for the year 1961-62, though two of such deposits came to be assessed in the year 1960-61 and in the alternative, the assessee having disclosed the deposits in the proceedings for the year 1961-62, there was full and true disclosure of material facts for making the original, assessment for the year 1960-61.

24. We do not think that the Income Tax Appellate Tribunal was right in recording either of the two findings on the facts found by it. We will now proceed to give our reason for it.

25. Before proceeding further, we may notice Section 147(a) of the Act with which we will be concerned.

" 147. If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or.....

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year)."

26. We are concerned in this question as to whether the reopening was valid under Clause (a) of Section 147. Under this clause, it is obligatory on the part of the assessee to disclose fully and truly all material and relevant facts. Clause (a) of Section 147 applies when either no return has been filed or when a return is filed but there is still a failure to disclose fully and truly all material facts which have resulted in the escapement of any income. If any of these factors are missing, the Income Tax Officer will have no jurisdiction over the escaped income. For the application of this clause, there must be failure to disclose fully and truly all material facts necessary for the assessment "for that year" or failure to make a return "for any year". The expressions used in this clause are "for that year" or "any year". The correctness of the first part of the Tribunal''s finding will depend on the true import of these words. In our opinion, these words refer to the assessment which is the relevant one. These expressions have been used with reference to the failure on the part of the assessee to file its return or to make full and true disclosure of material facts for a specific year. The specific year or the relevant year is the one in which the disputed income is chargeable to tax in accordance with law but have escaped assessment. To put it differently, these words do not mean "some year" Section 147 is not a charging section. It merely provides for a machinery whereby the income which had escaped assessment or had been underassessed in a relevant year is brought into the net of taxation. The obligation* cast on the assessee under this clause to make a full and true disclosure of material facts must, therefore; refer to that year. This is also evident from the section itself as the mandate given to the Income Tax Officer is "he may .. .assess or reassess such income for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year)". The view that since the impugned credits were found entered in the account books of the assessee maintained for the year 1961-62, it was absolved of its obligation to make a full and true disclosure of the two deposits in the year 1960-6.1 cannot be sustained. The amounts were of a revenue nature and liable to be assessed as income from an undisclosed source and so there was a clear obligation on the assessee to disclose the material facts taking the previous year as the financial year as that was the law as it stood under the Act of 1922 for assessment of an income from an undisclosed source. The fact that sums were entered in the account books disguised as hundi credits did not alter the nature of the amounts in question nor could it exonerate the assessee of its obligation to make a full and true disclosure of its income in the relevant year.

27. The alternate finding of the Tribunal is equally not acceptable as a proposition of universal application for determining whether there was a full and true disclosure of material facts will depend on the facts of each case. The view taken by the Tribunal

may hold good in a situation like the one with which this court was concerned in the case of Jagdish Prasad v. CJT [1976] 104 ITR 214. In that case, the assessee had disclosed certain deposits which were found recorded in its books maintained for the assessment year 1944-45. This disclosure was made when the proceedings for the assessment year 1943-44 were pending before the Income Tax Officer, the year in which those deposits could be assessed as income from undisclosed sources taking the financial year as the corresponding previous year. This court ruled as under (vide headnote):

"The Income Tax Officer had noticed the cash credits before February 22, 1947, and, on that date, after considering the explanation of the assessee, he had become aware of the true nature and source of the deposits, namely, that they were the assessee''s income from undisclosed sources. At that time the assessment proceedings for 1943-44 were pending and if the Income Tax Officer had been aware of the correct legal position, there could have been no difficulty in the assessment for the year 1943-44. Therefore, the income.....could not be said to have escaped assessment because of the failure or omission on the part of the assessee so as to attract the provisions of Section 34(1)(a) of the Act."

28. In the instant case, the assessee did not disclose the huge deposits amounting to Rs. 50,000 at the time of the original assessment proceedings for the year 1960-61. Thus, the return of income was false, or at any rate, inaccurate. It was the assessee''s own case that the disclosure about the hundi deposits was made in the proceedings for the assessment year 1961-62. There is no whisper, much less any finding in the order of the Income Tax authority, that at the time when the said disclosure regarding hundi deposits was made, the original assessment proceedings for the assessment year 1960-61 were pending before the assessing officer, or the attention of the Income Tax Officer was invited to consider the nature and source of hundi deposits. On the contrary, as stated earlier, the assessment for the year 1960-61 had been completed much earlier to the assessment for the year 1961-62. It may be that the Income Tax Officer who made the assessment for the year 1961-62 might have had all the accounts of the creditors before him and might have known the deposits made by the assessee in its books. The fact that this information came to the notice of the Income Tax Officer subsequently after the completion of the original assessment for the year 1960-61 is of no avail to the assessee in the discharge of its obligation to make a full and true disclosure of material facts in the relevant year in which the two impugned deposits were assessable.

29. The next question in such circumstances is whether it could be said that the Income Tax Officer had reason to believe that by reason of failure on the part of the assessee to make a full and true disclosure of material facts, the assessee''s income -for the year 1960-61 had escaped assessment.

30. Surely, having acquired knowledge that the impugned deposits made by the assessee as hundi loans were its revenue income, the Income Tax Officer could not have proceeded to assess it in the assessment year 1961-62. It could be assessed in the assessment year 1960-61, as the previous year in respect of the income from an undisclosed source could only be the financial year corresponding to the assessment year. The Income Tax Officer, therefore, had no choice but to resort to Section 148 of the Act on the footing that there was non-disclosure of material facts as contemplated by Section 147(a) of the Act and as a result whereof the income chargeable to tax for the assessment year 1960-61 had escaped assessment.

31. That apart, from what we have stated above, having regard to the nature of the information that was given in the assessment year 1961-62, it is not possible for us to hold that the assessee had discharged the obligation cast on it under Clause (a) of Section 147 to make a full and true disclosure of primary facts necessary for its assessment. All that was done by the assessee, as per the finding of the Tribunal, was that a copy of the creditor''s t account was furnished before the assessing officer in the assessment proceedings for the year 1961-62. This was not sufficient to exonerate the assessee of its obligation under Clause (a) of Section 147. It is settled law that the fact that there is vague information before the Income Tax Officer at the time of the original assessment is not sufficient to take the case out of the obligation on the part of the assessee to disclose fully and truly all material facts. And further the fact that the Income Tax Officer could have made an enquiry into the matter, but did not do so, does not take the case out of the scope of Section 147(a) as the assessee had failed to place truly and fully all material facts. These tests were laid down by the Supreme Court in Commissioner of Income Tax, Madras Vs. T.S.Pl.P. Chidambaram Chettiar (Dead) through Legal Representatives, . We may also refer to a decision of the Calcutta High Court in Tarachand Ghanshyamdas Vs. Commissioner of Income Tax, , a case arising from reassessment proceedings. There the assessment was reopened on the ground that certain amount standing to the credit of the assessee represented its concealed income which was not disclosed. The assessee''s case was that it had made a full and true disclosure in the original assessment proceedings inasmuch as a copy of the accounts was filed along with the return. The Calcutta High Court while repelling the assessee''s case held (at page 580):

"If it is a duty of the assessee to bring to the notice of the Income Tax Officer particular items in the books of account or portions of the documents which are relevant, then it may reasonably be held that even if the balance account is produced or the balance is drawn attention to, that would not be a sufficient disclosure of all the relevant facts."

32. Before we part with the case, we must advert to one more finding recorded by the Income Tax Appellate Tribunal while invalidating the reassessment proceedings. It has held that the Income Tax Officer had no material in his possession on which

he could have reason to believe that any part of the assessee''s income had escaped assessment. On a reading of question No. 1 referred to us and at first blush, it appeared to us that the said question does not cover this aspect of the matter. This finding is independently fatal to the assessment like the other two findings recorded by the Tribunal. Therefore, at one stage, we were inclined to return the reference unanswered as even if both the questions were to be answered in favour of the Department on whose instance this reference was made, on the grounds dealt with earlier, the Department will get no benefit as the assessment would still be invalid because of this finding. However, we were referred to the application made to this court u/s 256(2) of the Act, which was numbered as ITA No. 475 of 1974. In that application, as many as seven questions were raised including the one assailing the findings of the Tribunal that the Income Tax Officer had no material in his possession to entertain the belief referred to above.

33. While issuing the mandamus directing the Income Tax Appellate Tribunal to refer the questions which are the subject-matter of this reference, vide its order dated April 22, 1977, this court observed :

" The other questions are not being called as, in our opinion, they are covered by question No. 1. "

34. In these circumstances, we must proceed on the footing that question No. 1 is wide enough to include the last finding of the Tribunal referred to above. We accordingly proceed to examine the case with reference to the last finding of the Tribunal.

35. The Tribunal has invalidated the assessment by saying:

"From the report of the Income Tax Officers, it is nowhere clear that the loan creditors were not genuine. The report has simply indicated that the loan could not be verified. There are several factors by which the loan could not be verified, still the loan may be genuine. Therefore, if the Income Tax Officers concerned under whose jurisdiction the creditors were doing business were not able to verify the loans, the loans could not be taken as non-genuine. And, therefore, we cannot say that the Income Tax Officer had any reason to believe that income had escaped assessment during the year on account of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. "

36. In explaining the expression " reason to believe " in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , it was observed by the Supreme Court (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."

37. In another case, Chhugamal Rajpal Vs. S.P. Chaliha and Others, , the Supreme Court pointed out (at page 607):

" What that provision requires is that he must give reasons for issuing a notice u/s 148. In other words, he must have some prima facie grounds before him for taking action u/s 148. "

38. As we have noticed earlier, the assessee had not disclosed the impugned cash credits at the time of the original assessment. When he initiated action u/s 148, he was in possession of definite information that the assessee''s hundi creditors were bogus parties as held by the Income Tax Officer, Hundi Circle, Calcutta. He was in possession of the statement on oath of the creditors wherein they had confessed that the transactions in their names were not genuine. Action u/s 148 for the year in dispute was taken some time in the year 1966. At that time, the proceedings for reassessment for the year 1961-62 were already completed in 1963. The assessee had failed to produce the hundi creditors before the Income Tax Officer in reassessment proceedings for the year 1961-62. The belief of the Income Tax Officer when he initiated proceedings u/s 148 for the year in dispute has to be judged in this background. Having regard to the principle laid down by the Supreme Court, in our opinion, there was adequate material, both direct and circumstantial, on which the Income Tax Officer could entertain a belief to initiate action u/s 148 against the assessee. Such a belief entertained by the Income Tax Officer cannot be said to be a belief which is based on suspicion, gossip or rumour. At the stage of initiating proceedings u/s 148, the Income Tax Officer is not required to record his final conclusion as to the assessability of an income or otherwise.

39. In Jash Bhai F. Patel Vs. Commissioner of Income Tax, , somewhat in similar circumstances, action u/s 147(a) was upheld by the Punjab and Haiyana High Court as would appear from the headnote of the report reproduced below :

"Where the proprietor of a money-lending concern himself makes a statement that the loans alleged to have been advanced by his firm to various concerns were all bogus, it is open to the Tribunal to act on such a statement and infer that the assessee-firm has failed to prove the genuineness of the cash credits of the amounts shown as loans taken from the money-lending concern.

Where an assessee disclosed loans in the names of certain hundi dealers and subsequently one of the hundi dealers stated that the loans in the name of his concern were not genuine, there is no true disclosure of material necessary for assessment and reassessment proceedings can be taken u/s 147(a) of the I.T. Act, 1961.

Once a finding is arrived at that the assessee-firm made false entries in its books of account and there is the additional evidence of the money-lending dealer to the effect that he had been indulging in name-lending only, it is open to the Tribunal to come to the conclusion that the assessee-firm had indulged in deliberate

concealment of income and to uphold the penalty imposed on it. "

40. Reference can be made to numerous other decisions including the decision in Kirpa Ram Ramji Dass Vs. Income Tax Officer, A-Ward and Another, and a decision of the Delhi High Court in Shiv Satan Krishan Kumar v. CIT [1982] 137 ITR 409, in which, in similar, if not identical, circumstances, action u/s 147(a) was upheld.

41. We are in respectful agreement with the law laid down in these decisions.

42. We are, therefore, of the considered view that the Income Tax Appellate Tribunal was not right in recording a finding that there was no material before the Income Tax Officer to initiate the proceedings u/s 148.

43. For the reasons stated above, we answer both the questions referred to us in the negative, in favour of the Department and against the assessee. The Commissioner of Income Tax shall be entitled to his costs which we assess at Rs. 250.