(1974) 10 AHC CK 0011

Allahabad High Court

Case No: Special Appeal No''s. 476, 477 and 478 of 1965 and Writ Petition No''s. 5946, 5947 and 5948 of 1970

Modi Spinning and Weaving Mills	APPELLANT
Vs	
Income Tax Officer	RESPONDENT

Date of Decision: Oct. 28, 1974

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1922 - Section 10(2), 34
- Income Tax Act, 1961 - Section 148, 22, 271(1)

Citation: (1975) 101 ITR 637

Hon'ble Judges: H.N. Seth, J; C.S.P. Singh, J

Bench: Division Bench

Advocate: Ashok Gupta, for the Appellant; Deokinandan and R.R. Misra, for the Respondent

Final Decision: Disposed Of

Judgement

H.N. Seth, J.

All these special appeals and writ petitions raise common and connected questions of fact and law and can be conveniently dealt with and disposed of by a common judgment.

2. M/s. Modi Spg. and Weaving Mills, hereinafter referred to as "the company", was incorporated in 1946. From time to time, the company purchased and installed machinery of the value of Rs. 75,00,000 for its factory. In proceedings for assessment of Income Tax, the company was allowed, in computing its income from business for the assessment years 1950-51, 1951-52 and 1952-53, initial depreciation aggregating to Rs. 15,91,511 in respect of new machinery installed in the relevant previous years. The company was also allowed normal depreciation at the appropriate rates. In the assessment year 1956-57, the aggregate of all the

depreciation allowances including initial depreciation exceeded the original cost of the machinery, but the Income Tax Officer, on the written down value of the machinery computed at Rs. 16,48,053, allowed Rs. 2,59,236 as normal depreciation. In so computing the normal depreciation, the Income Tax Officer apparently lost sight of Clause (c) of the proviso to Section 10(2)(vi) of the Indian Income Tax Act, 1922, which provided that the aggregate of all allowances in respect of depreciation on machinery and plant was not to exceed the original cost of the same to the assessee. The Income Tax Officer allowed similar depreciation allowance which, because of the aforesaid Clause, was not allowable, in the assessment years 1957-58 and 1958-59, as a percentage on the appropriate written down value of the machinery and plant in those years. Subsequently, the Income Tax Officer, on November 20, 1964, issued notices for reopening the company''s assessment for the three years, u/s 148, of the Income Tax Act, 1961. The company filed fresh returns under protest and objected to the notices issued for reopening its assessments.

3. The company further filed three Writ Petitions Nos. 969 of 1965, 970 of 1965 and 971 of 1965 MODI SPINNING AND WEAVING MILLS COMPANY LTD. Vs. Income Tax OFFICER, SPECIAL INVESTIGATION CIRCLE "B", MEERUT., in respect of each of the three years and prayed that the three notices issued u/s 148 of the Act for reopening its assessment be quashed. At the hearing of the petitions, counsel for the company conceded that during the course of assessment for the three years it had in fact been allowed depreciation in contravention of Clause (c) to the proviso to Section 10(2)(vi) of the 1922 Act. It was also admitted that because of Clause (c) to Explanation 1 to Section 147 of the Income Tax Act, 1961, the petitioner''s income having been made the subject-matter of excessive relief under the Indian Income Tax Act, 1922, it had escaped assessment. Learned counsel for the petitioner urged that the Income Tax Officer could have no jurisdiction to reopen its assessment unless he had reasons to believed that while filing its return, the petitioner had not truly and fully disclosed all the information required to be furnished in the prescribed form. There is no column in the prescribed form which required an assessee to state the particulars either about the initial depreciation in respect of a machinery allowed in earlier years or that about its cost to the assessee. Accordingly, if the petitioner did not furnish that information in its return, it cannot be said that he failed or omitted to fully and truly disclose material particulars and no question of the Income Tax Officer believing that any part of the petitioner''s income has escaped assessment on account of its failure to disclose material particulars of its income arose. Moreover, necessary facts regarding the cost of the machineries and the initial and normal depreciation allowed in respect of such machinery in earlier years was available to the Income Tax Officer in the assessment record of the petitioner. In the circumstances, if the Income Tax Officer did not care to look into the record available with him, it could ''not be said that escapement of income from assessment was by reason of the petitioner failing to disclose these facts. It, on the other hand, was by reason of the Income Tax Officer omitting to look

into the assessment record of the petitioner.

4. The three writ petitions came up for hearing before the learned single judge of this court. He held that the company filled the columns its return correctly. He repelled the argument raised on behalf of the revenue that in column 2 of Part V of its return, the statement of particulars prescribed to be furnished with regard to claim of depreciation under proviso (a) of Section 10(2)(vi), the petitioner furnished wrong particulars of the written down Value of the machinery at the beginning of the accounting period inasmuch as it did not, while working out the written down value, take into account the amount of initial depreciation which had been allowed in earlier years. He worked it out only by taking into consideration normal depreciation. This resulted in furnishing of inaccurate particulars and it was because of this that the Income Tax Officer was misled into making a wrong assessment. The learned single judge held that in connection with column 2 of Part V of the return, the petitioner correctly disclosed the amount of the written down value of the machinery. For calculating the amount of the written down value of the machinery at the beginning of the accounting year, the amount of initial depreciation allowed in any earlier year was not to be taken into consideration. The learned judge, however, observed that it was incumbent upon the petitioner to disclose to the Income Tax Officer all material facts necessary to make out its claim to depreciation. It was not open to it to set out only those facts which exaggerated its claim; it was bound to disclose all material facts which went to show the correct amount of the allowances to which it was entitled. In the result he rejected the three petitions. The petitioner then filed three special appeals, namely, Special Appeals Nos. 476 of 1965, 477 of 1965 and 478 of 1965.

5. In appeal this court observed that the only question for consideration was whether the Income Tax Officer was justified in issuing a notice u/s 148 of the Income Tax Act, 1961. After stating that there was apparently a mistake and error on the side of the company as well as the Income Tax Officer, the court observed that the Income Tax Officer could reasonably come to the conclusion that it was due to the omission and failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment that the Income Tax Officer committed the error as a result of which a part of the petitioner''s income escaped assessment. In the opinion of the Division Bench, it was just to hold that the Income Tax Officer, while issuing the notices u/s 148 of the Income Tax Act, could reasonably believe that, prima facie, the responsibility for escapement of assessment was on the assessee. In the result the Bench affirmed the judgment of the learned single judge and dismissed the three special appeals. Being aggrieved, the petitioner filed three appeals before the Supreme Court. The Supreme Court, by its judgment dated 10th February, 1969, allowed the three appeals. It set aside the judgment of the Division Bench and remanded the case for a fresh decision in accordance with the observations made in its judgment. The Supreme Court pointed out that Section 34 of the Income Tax Act conferred jurisdiction upon the Income Tax Officer to issue

notice in respect of the assessment beyond a period of four years but within the period of eight years, from the end of the relevant year, if two conditions existed-

(1) that the Income Tax Officer has reason to believe that income, profits or gains chargeable to Income Tax had been under-assessed ; and

(2) that he also had reasons to believe that such "underassessment" had occurred by reason of either-

(i) omission or failure on the part of the 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.

6. These conditions are cumulative and precedent to the exercise of jurisdiction to issue a notice of reassessment. It observed that while deciding the special appeals, this court had found that the petitioner''s income had in fact escaped assessment, but then it had not considered the question whether that income escaped assessment by reason of any omission or failure on the part of the company to disclose fully and truly all material facts necessary for its assessment. In the result, while setting aside the judgment of this court and remanding the case it directed this court to determine the question whether by reason of the omission or failure on the part of the company to disclose fully and truly all material facts necessary for assessment of the company for the three years in question, any income, profits or gains chargeable to Income Tax had escaped assessment or that the company has been given excessive depreciation allowance in computing its income.

7. It appears that while the three appeals were pending before the Supreme Court, the Income Tax Officer had been restrained from making assessment in pursuance of the notices issued u/s 148 of the Income Tax Act. However, when the appeals were decided by the Supreme Court on February 10, 1969, the stay orders came to an end the same day, and the Income Tax Officer completed the reassessment proceedings. He further directed the initiation of penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961, as while filing the revised return, the company had wrongly claimed depreciation on the written down value of the machinery in the same manner in which it had been claimed in the original return. The notice issued in this connection by the Income Tax Officer required the petitioner-company to appear before him on 9th April, 1972, and to show cause why penalty u/s 271 of the Act be not imposed upon it. The petitioner filed objection against the show-cause notice and thereafter approached this court by means of Writ Petitions Nos. 5946 of 1970, 5947 of 1970 and 5948 of 1970 praying that the penalty proceedings initiated by the respondents for the three assessment years in question be quashed, and obtained an order staying those proceedings.

8. The three special appeals (on remand made by the Supreme Court) and the three writ petitions (in respect of penalty proceedings) were listed together for hearing before this Bench. At that time, learned standing counsel appearing for the department urged that immediately after the decision of the Supreme Court, reassessment proceedings in respect of all the three years were completed on 10th February, 1969, and final assessment orders were made on the same date. Thereafter, the petitioner filed appeals against those assessment orders before the Appellate Assistant Commissioner which are still pending. In the writ petitions giving rise to the three special appeals the petitioner had not challenged validity of the fresh assessment orders made on February 10, 1969. As these assessment orders had been challenged by way of appeal and the petitioner had already availed of the legal remedy provided under the Income Tax Act, it was not entitled to any relief in proceedings under Article 226 of the Constitution. The three writ petitions giving rise to the three special appeals, therefore, deserve to be dismissed on this preliminary ground. So far as the penalty proceedings initiated for the three years in question were concerned, they were proceedings consequential to the assessment orders dated February 10, 1969, which had not been challenged before us, Accordingly, the three writ petitions filed subsequent to the order of remand made by the Supreme Court should also be dismissed, specially when the petitioner can obtain appropriate relief by having recourse to the procedure provided under the Income Tax Act. The petitioner then obtained time and filed Civil Miscellaneous Applications Nos. 6719 of 1974, 6720 of 1974 and 6721 of 1974, in the three special appeals, seeking to amend the respective writ petitions and claiming relief for the quashing of the three assessment orders dated 10th February, 1969, as well. The prayer made in the three amendment applications has been opposed by the learned counsel for the department on the ground that in respect of the assessment orders dated February 10, 1969, the petitioner is already pursuing its remedy provided under the Income Tax Act. Moreover, the assessment orders having been made as far back as February 10, 1969, an attempt to challenge the same by moving the amendment application filed on May 16, 1974, is extremely belated.

9. In the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, the assessee challenged the validity of the notice initiating reassessment proceedings u/s 34(1) of the Indian Income Tax Act, 1922, by filing a petition under Article 226 of the Constitution on the ground that the conditions precedent for initiating those proceedings did not exist. It appears that subsequent to the filing of that petition, the Income Tax Officer passed the assessment order in proceedings initiated on the basis of the impugned notice. The Supreme Court repelled the contention of the revenue that as the assessee did not seek to challenge in the writ petition the ultimate assessment order made in the case, the High Court should not in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution have gone into the question regarding validity of the notice giving rise to the proceedings culminating in the assessment order, specially

when the assessee could raise all those questions while seeking its remedy under the provisions of the Income Tax Act. It observed that the company had challenged the jurisdiction of the Income Tax authority to initiate proceedings u/s 34 at the earliest opportunity on the ground that the conditions precedent for the exercise of the power to issue notice under that section did not exist. When the Constitution conferred on the High Court the power to give relief, it became its duty to give such relief in fit cases and that the court would be failing to perform its duty if relief is refused without adequate reasons. In view of the fact that in that case the assessee had approached the High Court for relief against the notice issued u/s 34, at the earliest opportunity, in the opinion of the Supreme Court there was no reason why if a case for grant of relief was made out, it should not be granted to the assessee. When the fact that the notice issued u/s 34 had been followed up by an assessment order, which had not been challenged by the assessee in the High Court, was brought to the notice of the Supreme Court, it observed that that fact did not affect the assessee''s right to obtain relief under Article 226 of the Constitution. In that case, the Supreme Court, after holding that in so far as the notice for reopening assessment was without jurisdiction, it quashed the ultimate assessment order as well even though it had not been specifically challenged in the writ petition. In view of the observations of the Supreme Court in the Calcutta Discount Co.''s case it becomes clear that in a case where the very initiation of proceeding u/s 34 of the Income Tax Act had been challenged at the earliest, the High Court would not be justified in refusing to exercise its jurisdiction under Article 226 of the Constitution merely on the ground that the ultimate assessment order made in those proceedings has not been specifically challenged. Accordingly, whether an application for amendment had been filed or not, it would, as directed by the Supreme Court, have been incumbent upon us to examine the question whether initiation of proceedings u/s 34/147 of the Income Tax Act was within jurisdiction on merits, specially when while the proceedings were pending before the Supreme Court, no objection to the consideration of this question in proceedings under Article 226 of the Constitution, on the ground that the assessee could obtain necessary relief in proceedings under the Income Tax Act was raised and the Supreme Court has remanded the case to us for deciding the same on merits. We, therefore, overrule the department''s preliminary objections as well as its objections to the prayer for amendment of the writ petitions, and allow Civil Miscellaneous Applications Nos. 6719 of 1974, 6720 of 1974 and 6721 of 1974, seeking to amend the three writ petitions giving rise to the three special appeals.

10. We now proceed to consider the question for which the case has been remanded to us by the Supreme Court, viz. :

"Whether by reason of the omission or failure on the part of the Company to disclose fully and truly all material facts necessary for its assessment for the three years in question its income, profits or gains chargeable to Income Tax have escaped assessment or it has been given excessive depreciation allowance in

computing its income ?"

11. Answer to the question whether there had been a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment will necessarily depend upon the nature of the obligation in this regard, placed OQ it by various provisions of the Income Tax Act. At any particular stage of the assessment proceedings an assessee would be bound to disclose only such facts and furnish complete particulars of the information that the provisions of the Income Tax Act oblige him to disclose or furnish at that stage. If at that stage the assesses does not disclose or furnish to the Income Tax Officer all such facts and information which under the law he is obliged to disclose at that stage and which facts and information are necessary for his assessment, he may be accused of having failed to disclose fully and truly all material facts necessary for his assessment. It is true that as held by the Supreme Court in the case of Calcutta Discount Co. Ltd. v. Income Tax Officer that it is always the duty of the assessee to disclose fully and truly all primary relevant facts, but as stated above the nature of facts to be disclosed at a particular stage of assessment will necessarily depend upon the nature of information that the assessee is enjoined upon by the statute to furnish at that particular stage.

12. In the instant case, originally the petitioner-company filed its return while the Indian Income Tax Act, 1922, was in force. Section 22(1) of that Act laid down that every person whose total income exceeded the maxi mum amount which was not chargeable to Income Tax, had to furnish within a period specified in a notice a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be required by the notice), his total income and total world income during that year. While filing a return under this sub section, the person concerned was expected or required to disclose all material facts truly and fully in connection with the information sought for in the prescribed form as also about such other particulars which the income tax Officer might have, by means of a notice mentioned in that section, required him to furnish. Similarly, Sub-section (2) authorised the income tax Officer to call upon any person to file a return of his income in the prescribed form. The person who had been called upon to file a return under this sub-section also became liable to disclose to the income tax Officer truly and fully all relevant information to his assessment which he was required to supply in accordance with the prescribed form. If, however, the Income Tax Officer so liked he could under Sub-section (4) require any person who had filed a return either under Sub-section (1) or Sub-section (2), to produce or cause to be produced before him such accounts or documents as he may indicate or to furnish in writing and verified in the prescribed manner, information in such form and on such points or matter as he might indicate. Here again the assessee would be bound to truly and fully disclose the information required to be supplied by the income tax Officer. Section 23 then lays down that if the Income Tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence, that a return made u/s 22 was correct and complete, he was to assess the total

income of the assessee and determine the tax payable by him on the basis of his return. If the Income Tax Officer was not satisfied without requiring the presence of the person who made the return or without production of evidence that the return made u/s 22 was correct and complete he could serve upon such person a notice requiring him to produce evidence on which he wanted to rely in support of the return filed by him. The Income Tax Officer was then expected to make the assessment after taking into consideration such evidence as the person concerned wanted to produce as also such other evidence as he might have liked the assessee to produce on the points specified by him. The scheme underlying these sections seems to indicate that to begin with, at the time of filing of return, an assessee was merely required to furnish the particulars of his income in the prescribed form. In other words, he was to truly and fully supply the information sought for in various columns of the prescribed form of return. If the Income Tax Officer felt that the information conveyed, as per the prescribed form, was correct and was sufficient for making an assessment order, he could proceed to assess the person filing the return on its basis. At that stage no question of the assessee furnishing any information other than that required to be furnished in the prescribed form of return could arise. Accordingly, if the assessee truly and fully disclosed all information required to be supplied in the prescribed form of return, no question of his failure to disclose any other particulars of his income at that stage could arise. The next stage in the process of making an assessment was where a return in the prescribed form had been filed but the Income Tax Officer felt that although the information conveyed by the return was sufficient for making an assessment order, but before that information could be acted upon, the assessee should be required to verify the same by producing evidence. In such circumstances, he could require the assessee to produce evidence in support of his return. Here again the assessee was required to produce evidence only in support of the statements made by him in the prescribed form of return and there was no obligation upon him to convey any other or further information or to produce evidence in support of any other matter which may ultimately be found to be relevant for the purposes of making an assessment in his case. There could yet be a third stage where the Income Tax Officer felt that not only the information conveyed in the return required verification but also that it was not sufficient for making an assessment order. In such a case, he was required to specify the points and to ask the assessee to produce evidence on that point. He could also require the assessee to produce some particular evidence having a bearing on that point. It is at the stage when the assessee was required by the Income Tax Officer to elucidate some particular point that the assessee had again been obliged to disclose all primary facts truly and fully in respect of that point. Till this stage was reached, there was no obligation on the assessee to disclose or produce evidence in respect of the points other than those in respect of which the assessee was as provided in the prescribed form of return, obliged to furnish full and true information. In our opinion, so long as in the assessment proceedings, the third stage was not reached, the assessee could not be blamed or

held liable for not disclosing some information which till then he was not required to furnish in the prescribed form but which ultimately was found to be relevant in connection with his assessment.

13. In the instant case, the case of the department is not that at any stage of the proceedings the Income Tax Officer felt that either the information conveyed by the return was not sufficient for making the assessment or that he specified the points and required the petitioner to produce evidence or any particular evidence on that point. The case of the department merely is that while claiming depreciation in respect of its machinery and plant in the assessment years in question, the petitioner did not disclose in the return the original cost of the machinery and plant in question as also the aggregate of all depreciation allowances in respect therefore claimed by it u/s 10(2)(vi) in earlier years. The learned single judge found that the petitioner-company had correctly filled up Part V of the return. According to him, the assessee had furnished all the information that was specifically required to be supplied in various columns of the prescribed form correctly and truly. He also recognised that there was no column in the return which required the petitioner to mention the amount of initial depreciation in regard to machinery and plant that had already been allowed to the assessee in certain years and that the assessee had not omitted or failed to disclose anything required to be disclosed in the prescribed form of return. In his opinion the failure or omission on the part of the assessee could still take place while the assessment proceedings were pending before the Income Tax Officer. During the pendency of the assessment proceedings it was incumbent upon the assessee to disclose to the Income Tax Officer all material facts necessary to make out its claim and it was not open to him to set out only those facts which had the effect of exaggerating his claim. Accordingly, if during the assessment proceedings the petitioner did not disclose to the Income Tax Officer the total amount of depreciation allowed to it in the earlier years, it meant that it failed to disclose truly and fully material fact which was necessary for its assessment of that year.

14. As explained above, apart from the information conveyed by the petitioner in the prescribed form of return, it would have been required to furnish further information only if the Income Tax Officer had required it to disclose such information or produce evidence or the material relating to his claim for depreciation allowance on the written down value of the machinery and plant as disclosed by him in his return. It is not the case of the department that the Income Tax Officer had at any stage required the petitioner to furnish any information in connection with its claim for depreciation on the written down value of its machinery and plant. Its case merely is that this information ought to have been furnished in the return filed by the assessee, on his own.

15. The question whether an assessee is bound to disclose in its return information which is relevant for his assessment but which is not specifically required to be

supplied in the prescribed form or not, came up for consideration before the Supreme Court in the case of V.D.M.R.M.M.R.M. Muthiah Chettiar Vs. Commissioner of Income Tax, Madras, . In that case, one Muthiah who had been assessed to Income Tax in respect of his share in the income of a firm as also from other sources, while disclosing the amount of income from the firm received by his sons did not disclose the fact that they were minors. Accordingly, the Income Tax Officer while assessing Muthiah did not include in his income the share income of the sons received from the firm in which Muthiah was a partner, as provided in Section 16(3)(a)(ii) of the Indian Income Tax Act, Subsequently, the Income Tax Officer realised that the share income of the minor sons from the partnership firm in question was liable to be included in the income of Muthiah under the provisions of Section 16(3)(a)(ii). He, therefore, initiated proceedings u/s 34(1)(a) on the ground that the information given by Muthiah in his return was not full in the sense that he had not stated therein that his three sons who had received a share in the income from the partnership firm were in fact minors. While holding that in the circumstances Muthiah was not guilty of concealment or of not truly and fully disclosing material facts, the Supreme Court observed thus :
"The Act and the Rules accordingly imposed no obligation upon the assessee to disclose to the Income Tax Officer in his return information relating to income of any other person by law taxable in his hands.

But Section 16, Sub-section (3), provided that in computing the total income of any individual for the purpose of assessment there shall be included the classes of income mentioned in Clauses (a) and (b). Subsection (3)(a)(ii), in so far as it is material, provided:

''In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly--.....

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner.''

The assessee was bound to disclose u/s 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together with the location and style of the principal place and branches thereof and the extent of the shares of all such partners in the profits of the business, profession or vocation and any branches thereof, but the assessee was not required in making a return to disclose that any income was received by his wife or minor child admitted to the benefits of partnership of a firm of which he was a partner."

16. The Supreme Court further went on to consider that certain notes for guiding the drawing up of the return had also been printed in the prescribed form.

According to those notes the assessee had been informed that he had to disclose the income received by his wife and minor child from a firm of which the assessee was a partner. It was urged that, in the circumstances, non-disclosure of the fact that the three sons of Muthiah, who were minors, in the prescribed form, resulted in non-disclosure of material which was necessary for making Muthiah''s assessment. While dealing with this submission the Supreme Court observed thus :

"Assuming that there were instructions printed in the forms of return in the relevant years, in the absence of any head under which the income of the wife or minor child of a partner whose wife or a minor child was a partner in the same firm, could be shown, by not showing that income, the taxpayer cannot be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment. Section 16(3) imposes an obligation upon the Income Tax Officer to compute the total income of any individual for the purpose of assessment by including the items of income set out in Clauses (a)(i) to (iv) and (b), but thereby no obligation is imposed upon the taxpayer to disclose the income liable to be included in his assessment u/s 16(3). For failing or omitting to disclose that income, proceedings for reassessment cannot, therefore, be commenced u/s 34(1)(a). Section 22(5) required the assessee to furnish particulars of the names and shares of his . partners, but imposed no obligation to mention or set out the income of the nature mentioned in Section 16(3). In the relevant years there was no head in the form under which income liable to be assessed to tax u/s 16(3)(a) and (b) could be disclosed.

We are, in the circumstances, unable to agree with the High Court that Section 34 imposed an obligation upon the assessee to disclose all income includible in his assessment by reason of Section 16(3)(a)(ii). Section 34(1)(a) sets out the conditions in which the power may be exercised : it did not give rise to an obligation to disclose information which enabled the Income Tax Officer to exercise the power u/s 16(3)(a)(ii) nor had the use of the expression ''necessary for his assessment'' in Section 34(1)(a) that effect."

17. These observations made by the Supreme Court clearly make out that while filing a return an assessee is not bound to disclose any information other than that what is required to be mentioned by him in various columns of the prescribed form of return or which he is bound under the provisions of the Act to furnish even though that fact may otherwise be relevant for the purposes of his assessment. Merely because such information has not been furnished in the return it would not mean that the assessee had failed or omitted to disclose fully and truly all material facts necessary for his assessment. As stated, the obligation for supplying such other information could arise only if the Income Tax Officer had required the assessee to furnish information in connection with the amount of depreciation on the written-down value of his machinery and plant.

18. It may be mentioned here that the case taken up by the department in its counter-affidavit is that there was an omission and failure on the part of the

assessee in truly and fully disclosing the particulars of its income inasmuch as the written-down value of its machinery and plant as at the beginning of the accounting period was wrongly mentioned by it in the column meant for the same, in Part V of the return. According to the department, while mentioning the amount of the written-down value as at the beginning of the accounting period, the assessee should have taken into account not only the normal depreciation to which it was entitled, but it should also have accounted for the amount of further depreciation which had been allowed to it u/s 10(2)(via), Consequently, the amount of claim of depreciation made in column 9 of the return was inaccurate. For the reasons given by the learned single judge in his judgment we fully agree with him that while stating the written-down value as at the beginning of the accounting period, in column 2 of Part V of the return, the assessee was merely required to enter the written-down value of its machinery and plant after taking into account the normal depreciation and for that purpose it has not to make any allowance in respect of the additional depreciation claimed and allowed u/s 10(2)(via) in any earlier year. It is accordingly not necessary for us to reiterate the argument advanced by the counsel for the department as also the reasons for rejecting the same. We fully agree with the learned single judge that there was no failure or omission on the part of the petitioner in disclosing the written-down value of the machinery and plant at the beginning of the accounting period under column 2.

19. The claim of depreciation is to be made by an assessee under column 9. Under that column the assessee is not required to disclose any facts or particulars necessary for his assessment. All that he is required to do is to state the amount of depreciation which according to him is claimable under the law. Accordingly, if a claim mentioned in column 9 of the return is for some reason found to be erroneous or exaggerated, it cannot be said that the assessee has furnished inaccurate particulars of its income or that he had omitted or failed to truly and fully disclose particulars material for its assessment.

20. Learned counsel for the department then contended that column 6 of Part V of the prescribed form of return required the assessee to state the amount on which the depreciation-is now allowable. According to him under this column the assessee should have stated the amount after further adjusting the written down value as at the beginning of the accounting period mentioned in column 2 by the initial depreciation which had been claimed and allowed to it in earlier years. It is not necessary for us to go into this question as there is no evidence before us about the precise entry made by the petitioner in column 6 of its return. A perusal of the counter-affidavit does not show that the department at any stage took up the stand that the petitioner had failed to disclose truly and fully the particulars with regard to the information meant to be supplied in column 6 of the prescribed form of return. In the circumstances, we are not inclined to permit the counsel for the department to raise this argument for the first time at this stage. Moreover, during the course of hearing of these cases learned counsel for the department brought to our notice

that the petitioner supplied the information sought for in Part V of the prescribed form of the return, on a separate sheet of paper in which no amount meant to be stated in column 6 of the return was mentioned. This means that in its return the petitioner did not mention any amount on which depreciation was now allowable. Even if the case of the department is accepted, all that the assessee in the circumstances could do was not to mention any amount under column 6. In this view of the matter also it cannot be said that the petitioner had either supplied inaccurate information or had failed to supply information meant to be supplied under column 6. We are, therefore, of opinion that in this case there was no failure on the part of the company in disclosing fully and truly all material facts necessary for its assessment for the three years in question. Accordingly, it cannot be said that the excessive depreciation allowed in computing the petitioner''s income was as a result of such failure or omission on its part. In the result the condition precedent for exercising jurisdiction u/s 147(1)(a) of the Income Tax Act did not exist and the respondents have no jurisdiction to reopen the petitioner''s assessment under that Clause. Learned counsel for the department did not dispute that in case it is held that the reopening of the proceedings for assessment was without jurisdiction (sic), and, therefore, initiation of penalty proceedings which were taken as a consequence of these assessment proceedings would also fail.

21. In the result all the three special appeals and the three writ petitions succeed and are allowed. Judgments of the learned single judge dated 2nd September, 1965, in Writ Petitions Nos. 969, 970 and 971 of 1965 are set aside and these petitions are allowed. The proceedings for reopening the petitioner''s assessment for the years 1956-57, 1957-58 and 1958-59 initiated in pursuance of notice dated November 20, 1964, are quashed. The assessment orders dated February 10, 1969, made in respect of these years are also quashed. We further quash the penalty proceedings initiated against the petitioner for the three assessment years in question in pursuance of the notice dated February 10, 1969. The petitioner will be entitled to receive costs from the respondents in each of these six cases.