(2004) 08 CAL CK 0046

Calcutta High Court

Case No: MAT No''s. 3139, 3140 and 3141 of 2002 and CAN No''s. 9028, 9032 and 9033 of 2002

Peerless General Finance and Investment Co. Ltd.		APPELLANT
	Vs	
Deputy Commissioner of Income Tax and Others		RESPONDENT

Date of Decision: Aug. 20, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 147, 148

Citation: (2005) 195 CTR 161 : (2005) 273 ITR 16 : (2005) 146 TAXMAN 475

Hon'ble Judges: Sadhan Kumar Gupta, J; Aloke Chakrabarti, J

Bench: Division Bench

Advocate: Debi Pal, R.K. Murarka, M. Seal and Ananda Sen, for the Appellant;P.K. Ghosh, R.N. Mitra and Md. Nizamuddin, for the Respondent

Final Decision: Allowed

Judgement

Sadhan Kumar Gupta, J.

All the mandamus appeals were heard analogously as the facts and law involved in those appeals are the same and almost identical. Those three mandamus appeals arose out of the writ applications bearing No. C. O. 4959(W) of 1989, CO. 4960(W) of 1989 and C.O. 4961 (W) of 1989. By a single judgment dated August 8, 2002 (see Peerless General Finance and Investment Co. Ltd. Vs. Deputy Commissioner of Income Tax and Others,), the learned single judge of this court, disposed of those three writ petitions against the appellants. Being aggrieved and dissatisfied with the said order of the learned single judge, the present appeals have been preferred by the appellant.

2. The writ applications were instituted by the appellant challenging the notice issued u/s 148 of the Income Tax Act, 1961, for the purpose of reopening the assessment of the company for the years 1981-82, 1980-81 and for the assessment year 1973-74. By issuing the said notice, the Income Tax Officer proposed to reopen the assessment of the appellant-company for those three years. The Income Tax Officer issued those notices u/s 148 of the Income Tax Act on grounds which are identical in nature. The said notice u/s 148 of the Act was issued on the ground as follows :

"1. On the basis of information available in

(a) the auditors'' observations in the annual reports of Peerless for 1986 (assessment year 1987-88) and 1987-88 (15 months ending on March 31, 1988, relevant to the assessment year 1988-89) ;

(b) the Supreme Court''s observations in the case of RBI v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 ; and

(c) the report of the Reserve Bank of India on inspection of the books of Peerless conducted in 1979,

the following facts of accounting of income and liabilities of the assessee-company came to light.

(1) The Social Welfare Scheme Fund is in excess of the total liability of the company towards the certificate holders.

(2) The company has been retaining in the fund amounts forfeited on surrender of certificates and liabilities already provided thereon on accrual basis. Amounts in respect of unclaimed matured certificates continue to remain in the fund even after maturity. Amounts in respect of lapsed certificates also continue to remain in the fund.

(3) The generous distribution of commission among the agents out of the first year''s subscription and the class of investors tapped by such agents have resulted in large scale dropouts by the investors after the first year.

(4) There was large scale lapsation of certificates varying between 34.26 per cent, and 59.71 per cent., during the first three years, the forfeiture range.

2. While checking the income accounting for the previous year relevant to the assessment year 1985-86, it was found that the assessee has been furnishing incorrect computation of income on the basis of wrong assumption and inflated generalisation as under :

(i) The provision for refund of subscription at a fixed percentage of the first year''s subscription was in respect of pure contingent liability. The quantification of such liability was on the basis of flawed actuarial certificate.

(ii) The provision of interest and bonus accrued at a fixed percentage of the balance in the Social Welfare Scheme Fund on accrual basis was incorrect even on actuarial basis, which the assessee was supposed to be following.

3. On a check of the abovementioned facts of the accounting of income and expenditure, it emerged that income exceeding Rs. 50,000 has escaped assessment in the following respects as a result of inadequate and incorrect statements, misleading actuarial certificate, wrong basis of calculation and suppression of relevant facts :

(a) Income from forfeiture of lapsed certificates.

(b) Profit u/s 41(1) of the Income Tax Act as a result of cessation of liability already claimed as ''interest and bonus accrued.''

(c) Excess deduction claimed under the head, ''Interest and bonus accrued'', at a fixed percentage of the Social Welfare Scheme Fund on the ground that the fund was in excess of the requirement.

(d) Excess deduction claimed under the head, ''Interest and bonus accrued'', at a fixed percentage of the balance in the said fund on the ground that such percentage was in excess of the amount allowable on accrual basis.

(e) Deduction claimed under the head, ''Provision for refund of subscription'' on the strength of wrong actuarial advice.

4. In the circumstances stated above, I have reason to believe that, by reason of the omission and failure on the part of the assessee, the Peerless General Finance and Investment Co. Ltd., to disclose fully and truly all material facts necessary for its assessment for the assessment year 1981-82, income exceeding Rs. 50,000 has escaped assessment for that year."

3. So it appears from the said notice that the Income Tax Officer preferred to issue the same on the basis of the information available to him and those are :

(a) Auditor''s observation in the annual reports of Peerless for the assessment years 1987-88 and 1988-89 ;

(b) The Supreme Court''s observation in the case reported in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 ; and

(c) The report of the Reserve Bank of India on inspection of the books of Peerless conducted in 1979.

4. Thus it is clear that the Assessing Officer''s reason to believe that there was suppression of income by the appellant-company was on the basis of those three items mentioned above.

5. In this respect, it is relevant to look into the provisions of Section 147 regarding income escaping assessment. Section 147 of the Income Tax Act, provides :

"If, -

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

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Assessing Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

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)."

6. This provision clearly shows that if the Assessing Officer has any information in his possession which led him reasonably to believe that income chargeable has escaped assessment in respect of an assessee for a particular assessment year, then he can take steps as per the provisions of the Income Tax Act. In this respect Section 149 of the Act provides that the Assessing Officer can issue notice u/s 148 of the Act even in case of an assessment year prior to the date of issuance of notice but in no circumstance can the notice be issued beyond the prescribed time limit as provided in the said section. So far as the present case is concerned it appears that all the notices were issued in respect of assessment years which did not cross the limit of the prescribed years as provided u/s 149 of the Income Tax Act. But there is a bar to the Assessing Officer in this respect where four years have passed from the end of the relevant assessment year. In such a case sanction of the appropriate authority is required as provided in Section 151 of the Act. The said Section 151 of the Income Tax Act runs as follows :

"In a case where an assessment under sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued u/s 148 except by an Assessing Officer of the rank of Assistant Commissioner or Deputy Commissioner :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice."

7. So the proviso to Section 151 provides that in our case, the sanction of the Chief Commissioner or Commissioner is required.

8. Keeping all these things in mind let us now see whether the Assessing Officer was justified in issuing notice to the appellant-company for the purpose of reopening the assessment of the said company for the years 1981-82, 1980-81 and 1973-74. Law in this respect has been clearly laid down in the case reported in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . At page 199 of the said decision, the hon''ble Supreme Court has clearly laid down the conditions which are required for the Assessing Officer for reopening of any assessment for a particular Year. The decision of the hon''ble apex court runs as follows :

"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 under-assessed. 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."

9. In the said decision it has also been observed that it is the preliminary duty of every assessee to disclose fully and truly all material facts necessary for his assessment. The duty of disclosing all the primary facts relevant to the decision to be arrived at by the Assessing Officer lies on the assessee. If such disclosure is made by the assessee then his duty is over and then the duty shifts upon the Assessing Officer to look into the return and to see whether all the facts necessary have been truly and fully disclosed or not. The hon''ble apex court in the abovementioned decision at page 201 clearly observed : "Does the duty, however, extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else- far less the assessee-to tell the assessing authority what inferences, whether of facts or law, should be drawn". So, as soon as the assessee files his return by disclosing all the relevant facts fully and truly, his duty is over and it is for the Assessing Officer to either accept it or to reject it. Once the assessment is accepted it is not permissible

for the Assessing Officer to reopen it again on any flimsy ground. Law in this respect is very much clear as provided in Section 147 of the Income Tax Act. It has been clearly laid down in the said section that the Assessing Officer can reopen the assessment of a particular year if he has reason to believe that there was omission or failure on the part of an assessee to make a proper return u/s 139 of the Act for any particular assessment year. So the main thing is that, the Assessing Officer must have reason to believe that there was omission or failure on the part of the assessee to disclose fully its income. In the decision reported in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, , the meaning of the word ""has reason to believe" has been elaborately discussed. In the said decision, the hon''ble court held to the effect (page 11) : "The important words u/s 147(a) are ''has reason to believe'' and the 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 fact 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."

10. The principles as decided in those two cases were also followed in the cases reported in The Coca-Cola Export Corporation Vs. Income Tax Officer and Another, ; Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, ; Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax, ; Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . As against this the learned advocate for the Revenue cited decisions reported in Noshirwan and Others Vs. Wealth-tax Officer and Another, ; Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, ; Income Tax Officer and Others Vs. Biju Patnaik, ; Income Tax Officer and Others Vs. Mahadeo Lal Tulsian and Others, ; M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, ; Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, and also in Praful Chunilal Patel Vs. M.J. Makwana, Assistant Commissioner of Income Tax, and also certified copy of a judgment passed by the Division Bench of this court in F. M. A. No. 372 of 1978. We have considered all these decisions. It appears from all these decisions that there is practically no dispute regarding the principles as laid down in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and also Ganga Saran and

Sons P. Ltd. Vs. Income Tax Officer and Others, . From those decisions, it is clear that before issuing a notice the Assessing Officer must have reason to believe that the assessee failed to furnish full and true disclosure of his income for a particular year. In this respect we have already pointed out that the Assessing Officer relied upon the Supreme Court''s observation in the case reported in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 and the report of the Reserve Bank of India and inspection of the books of Peerless conducted in the year 1979. Let us now discuss the present case on the basis of legal principles as discussed above.

11. We have already pointed out that the Assessing Officer has got enough power for reopening the assessment of a particular company for a particular year, provided he has reason to believe that the income of the assessee for a particular year escaped assessment due to suppression of the said income by the assessee concerned. It is the admitted position that three reasons were cited by the Assessing Officer in issuing notice u/s 148 of the Income Tax Act in the name of the appellant-company. Let us now look into those reasons and see how far the Assessing Officer was justified in issuing the said notice. One of such reasons was the Supreme Court''s observation in the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663. We have perused the said judgment of the hon''ble Supreme Court wherein it has been observed (page 677) : ". . . we have no information about the findings in the course of the inspection. Evidently, nothing objectionable was found. This is apparent from the affidavit filed on behalf of the Reserve Bank of India in the Calcutta High Court. This position was considered satisfactory by the Reserve Bank of India." Again the hon''ble court observed (page 678): "It was finally stated ''having regard to the satisfactory financial position of the Peerless and the fact that it was a well established one and having regard to the certificate furnished by the actuarial consultant of Peerless supported by data, it was granted exemption from the provisions of paragraph 4 of the 1973 directions. . .''." Again, if we look at page 685 of the said decision of the hon''ble apex court then it will appear that the hon''ble apex court referred to an inspection made by the Reserve Bank of India in the year 1979. In considering the said report, the Supreme Court observed that the team in its report pointed out various unhealthy features of the schemes managed by the Peerless company. In fact the principal unhealthy features as pointed out were also noted by the hon''ble Supreme Court at page 685. But nowhere in the judgment of the hon''ble Supreme Court, as relied on by the Assessing Officer in issuing the notice, or in the inspection report, was it pointed out that the appellant-company omitted or failed to disclose fully and truly all material facts relevant for the assessment year 1973-74. There was nothing to suggest from this decision that the income of the appellant-company for the said assessment year escaped assessment on account of any omission or failure on the part of the company to disclose fully or truly all the material facts. Undoubtedly the Supreme Court took notice of some

unhealthy practices allegedly conducted by the company in running its business but the said practice has got no nexus or live link with the escapement of income as claimed by the Assessing Officer. The Supreme Court never observed in the said decision that there was escapement of income on account of such unhealthy practice. In this respect the learned advocate for the appellant cited the decision reported in The Coca-Cola Export Corporation Vs. Income Tax Officer and Another, . In that case there was violation of the provision in respect of remittance of foreign exchange as provided in the Foreign Exchange Regulation Act, 1973. It has been held in the said decision that if any remittance of foreign exchange had been made in excess of the prescribed limit then it was for the Reserve Bank of India or the Central Government to take action or to grant permission as may be provided under the Foreign Exchange Regulation Act, 1973. The hon''ble apex court clearly held (headnote) : "That, however, could not be a ground for the Income Tax Officer to assume jurisdiction to start reassessment proceedings either u/s 147(a) or Section 147(b) of the Act on the ground that it would be ''in consequence of information'' in his possession in the shape of these two letters." The same analogy can be drawn so far as the case in our hand is concerned. If there is any unhealthy practice being followed by the appellant-company, then in that event it is for the Central Government or the Reserve Bank of India to take appropriate action against the company. But simply due to this observation, it cannot be said that the appellant-company suppressed its income for the relevant assessment year. As such, we are of the opinion that the Assessing Officer was not justified in issuing the notice u/s 148 of the Income Tax Act on the basis of the observation of the hon''ble Supreme Court in the case cited above.

12. The Assessing Officer further preferred to issue the notice on the basis of the information available in the report of the Reserve Bank of India on inspection of the books of Peerless conducted in the year 1979. But the said report was not placed before the court and it was not even disclosed either in the recorded reasons or in the affidavit in opposition. The learned advocate for the appellant in this respect relied upon the decision reported in Smt. Uma Devi Jhawar Vs. Income Tax Officer, . In the said decision it has been held (headnote) : "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 had reason to believe. In such a case, the notice issued by him would be liable to be struck down as invalid and without jurisdiction. The materials having a natural nexus to the formation of the belief have to be disclosed by the Income Tax Officer. He can do so by filing an affidavit. Mere disclosure of the belief in the affidavit filed by the Income Tax Officer without setting out any material on the basis of which the belief was arrived at is not sufficient." So far as the present case is concerned, it appears that the said report was not made available before the learned trial court at any time during the proceeding. And, as such, in view of the decision quoted above, this

ground, i.e., the report of the Reserve Bank of India on inspection of the books of Peerless conducted in 1979, which was one of the basis for issuance of the notice u/s 148 of the Act, cannot stand. To our mind, it must be held, in the absence of any such material, that the Assessing Officer was not justified in issuing the notice u/s 148 of the Act on the ground of alleged suppression of income by the appellant-company.

13. On the basis of the Supreme Court''s decision and the report of the Reserve Bank of India it cannot be said that the Assessing Officer had reason to believe that there was suppression of income by the assessee for the relevant assessment years. So, on those grounds, the Revenue has failed to prove that the Assessing Officer had reason to believe that there was suppression of material facts by the assessee for a particular year.

14. The Assessing Officer also preferred to issue the notice for reopening the assessments on the basis of the auditor''s observation in the annual reports of Peerless for the year 1986 (1987-88). It appears that on the basis of the said observation of the auditor, the Assessing Officer proposed to reopen the assessment for the years 1980-81, 1981-82 and for the assessment year 1973-74. The copy of the said auditor''s report has been filed in connection with this hearing. It appears that nowhere in the auditor''s report it was stated that there was suppression of material information in respect of the account of those three years. The observation of the auditor for the assessment year 1987-88 cannot have reasonable nexus or live link for the account statement as filed by the assessee in respect of the years 1973-74, 1980-81 and 1981-82. Nowhere in the auditor''s report does it appear that it has been mentioned therein that there was misstatement or suppression of facts in respect of the return filed by the company in respect of those three years. If we look into the auditor''s report then it will appear that simply some discrepancies have been pointed out in the said report. But that does not mean that there was suppression of material facts or income by the assessee-company. The learned advocate for the Revenue cited a judgment passed by the learned Division Bench of this court in F. M A. No. 372 of 1978 in order to substantiate his argument that the Assessing Officer is competent to reopen an assessment for a particular year on the basis of the new facts available to him. We have gone through the said judgment. In the said case it was subsequently detected by the Assessing Officer that there was a subsequent statement which unmistakably pointed out the suppression of material facts. So the facts of this case are not similar with those of our case. Similar is the case reported in Noshirwan and Others Vs. Wealth-tax Officer and Another, ; Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, ; Income Tax Officer and Others Vs. Biju Patnaik, ; Income Tax Officer and Others Vs. Mahadeo Lal Tulsian and Others, ; M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, . In all those decisions, the facts are not similar with those of the case in our hand. In all those cases there was subsequent detection of material facts which was suppressed by the assessee. So, in our considered opinion,

those decisions are not applicable so far as the present case is concerned. Here, there is no allegation of suppression of any material fact. It is the admitted position that all the facts in respect of the business of the company were placed before the Assessing Officer at the time of assessment. In fact the learned single judge in this judgment also observed to the effect (page 165 of [2002] 258 ITR) : "There is no dispute that when the return was submitted, the profit and loss account as well as the balancesheet had been furnished. There is also no dispute that at the time when the original assessments had been made, books of account of the petitioner, as had been called for, had been produced." So, he was also of the opinion that all the material facts were placed by the assessee-company at the time of assessment for the relevant years. Whether the procedure followed by the company is correct or not is a different issue. It is the admitted position that the Assessing Officer after being satisfied about those facts accepted the statement of the assessee-company. There is no new ground available to the Assessing Officer in order to form a reasonable belief that there was suppression of material facts by the assesseecompany. Moreover if we look into the case reported in 159 ITR (SC) (supra) then it will appear that the hon''ble Supreme Court was of the opinion that on the basis of the auditor''s report alone, it could not be said that the assessee had failed to disclose fully and truly all the basic facts at the time of the original assessment for the relevant assessments years. Moreover, we have already pointed out that nowhere in the auditor''s report it was mentioned therein that there was suppression of material facts and the assessee failed to disclose its income fully and truly for a particular year. The auditor''s report can at best be taken into consideration for the particular year for which the audit was done. But the said report cannot be the basis of the formation of the reasonable belief of the Assessing Officer in respect of the accounts for earlier years, as claimed by the learned advocate for the Revenue. So, on the basis of the said auditor''s report, in our opinion, the assessment of the appellant-company for the years 1973-74, 1980-81 and 1981-82 cannot be reopened.

15. The learned advocate for the Revenue further argued that in respect of the impugned notice the appellant-company has got an alternative forum for redressing its grievance and according to him the writ application is not maintainable for challenging the said notice. But law in this respect has been clearly settled in the decision reported in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . In the said decision the hon''ble apex court observed : "The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action . . . When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons."

16. As such from the said decision, it is very much clear that it is always open for the appellant-company to approach this court under its writ jurisdiction. The contention of the learned advocate for the Revenue is thus rejected.

17. So from our above discussion we are of the opinion that the Revenue has failed to prove that the Assessing Officer had valid reasons for reopening the assessment of the appellant-company for the years 1973-74, 1980-81 and 1981-82. So the notice, as issued by the Assessing Officer in the name of the appellant-company must be held to be illegal and invalid and should be struck down. We have perused the judgment passed by the learned single judge. It appears that in his judgment the learned single judge was of the opinion that from the Supreme Court judgment or from the reports of the Reserve Bank of India which were not produced by the Revenue at the time of hearing, it could not be held that there was suppression of income during the relevant years under consideration. He simply preferred to rely upon the auditor''s report, which according to him is sufficient for holding that there was prima facie reason for the Assessing Officer to hold that the appellant-company did not fully and truly disclose its income in respect of the assessment years in question. But we have pointed out in our discussion above, that there was nothing in the auditor''s report to come to such a conclusion. The learned judge was of the opinion that from the discrepancy/as appeared in the auditor''s report, it would be "anybody''s guess" as to since when such discrepancies continued. But we have already held that there is no material which have a rational connection or a live link or a direct nexus with the formation of the requisite belief u/s 147(a) of the Income Tax Act as laid down in the decision reported in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . The learned judge was of the opinion that it would be sufficient for the Assessing Officer if he was prima facie satisfied about the alleged suppression of material fact by an assessee. In this respect he preferred to rely upon the auditor''s report and was of the opinion that as the Assessing Officer was prima facie satisfied about the suppression of the material fact so he was justified in issuing such notice for the purpose of reopening the assessment. We regret we cannot agree with this observation. The law is now well settled by the hon''ble apex court, as discussed above, that the reason for the formation of the belief must have a rational connection with or relevant bearing with the information received. Rational connection, postulates that there must be direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of the 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 to be borne 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 reason in the formation of the belief must be held in good faith and should not be a mere pretence. The powers of the Income Tax Officer to reopen assessment, though wide, are not plenary. The

words as used in the statute are "reason to believe" and not "reason to suspect". But from our discussion above, we are of the opinion that there was no reason to believe on the part of the Assessing Officer to hold that there was escapement of income of the assessee in a particular year and as such it must be held that the Assessing Officer was not justified in issuing the notice in question.

18. Although, the learned judge in his judgment practically was of the opinion that the Revenue failed to substantiate its claim that on the basis of the information the Assessing Officer had reason to believe that there was suppression of income by the assessee-company, still he preferred to rely on the statement made by the company in its writ petition. On the basis of such statement, the learned judge was of the opinion that there cannot be any doubt that the Assessing Officer had sufficient reasons to issue the notice for the purpose of reopening the assessment for those three years. But we are unable to agree with this approach of the learned judge in coming to the conclusion that the Assessing Officer was justified in issuing the notice. The material on which the learned judge preferred to rely was not taken into consideration by the Assessing Officer while issuing the notice. This, in our opinion, is not permissible. If the notice is held to be valid on this ground, then that will certainly create a peculiar situation. Because in that event, the Assessing Officer will be compelled to reopen the assessment on the basis of the statement made in the writ petition, as suggested by the learned judge. At the same time it may be pointed out that the law does not allow the Assessing Officer to reopen the assessment on any other new ground which is not the basis of the issuance of the notice u/s 148 of the Act. The finding of the learned judge, in this respect, appears to us to be not proper and as such it should be set aside.

19. Therefore, from our above discussion, we are of the opinion that the Assessing Officer was not justified in issuing the notice for the purpose of re-opening the assessment of the appellant for the years 1981-82, 1980-81 and 1973-74. As such the said notice is liable to be struck down and set aside.

20. In the result, all the three appeals are allowed on contest. The notices u/s 148 of the Income Tax Act, as issued by the Assessing Officer against the appellant, are struck down and set aside.

21. CAN No. 9028 of 2002, CAN No. 9032 of 2002 and CAN No. 9033 of 2002 stand disposed of.

22. Xerox certified copy, if applied for, may be handed over to the party on an urgent basis.

Aloke Chakrabarti, J.

23. I agree.