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**(1979) 07 BOM CK 0034**

**Bombay High Court**

**Case No:** Miscellaneous Petition No. 374 of 1974

Mill Stores Trading Co.  
of India P. Ltd.

APPELLANT

Vs

J.B. Panchal, Income  
Tax Officer and Another

RESPONDENT

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**Date of Decision:** July 18, 1979

**Acts Referred:**

- Excess Profits Tax Act, 1940 - Section 10A, 15

**Citation:** (1979) 07 BOM CK 0034

**Hon'ble Judges:** Pendse, J

**Bench:** Single Bench

**Advocate:** V.H. Patil and S.J. Mehta, for the Appellant; R.J. Joshi, for the Respondent

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### **Judgement**

Pendse, J.

The petitioner is a company assessed under the Excess Profits Tax Act, 1940 (hereinafter referred to as " the Act "). The relevant chargeable accounting periods which are in dispute in this petition are the calendar years 1941 and 1942. The petitioner, in the relevant period, was doing business in mill stores including oils and lubricants. Mr. Horai Mehta and his four sons held 91% profits-shares. The petitioner also did business in Ahmedabad through one G.P. Parikh. In November, 1941, two private companies were registered and they were : (1) Mill Stores (Ahmedabad) Ltd., and (2) Sir Homi Mehta (Ahmedabad) Ltd.

2. The 1st respondent, ITO, completed the petitioner's assessment under the provisions of the Act and came to the conclusion that Section 10A of the Act cannot be invoked in respect of the petitioner's business and the business of the two private companies registered in Ahmedabad. The EPTO also issued notice to the Mill Stores (Ahmedabad) Ltd. u/s 10A of the Act to show cause why the provisions of that section should not be applied in respect of its and Sir Homi Mehta (Ahmedabad) Ltd.'s business. The officer,

after holding enquiry, came to the conclusion that the provisions of Section 10A of the Act were attracted and accordingly made adjustment in the assessment of the said two companies. The said two companies carried appeals before the Income Tax Appellate Tribunal and the appeals were allowed. While allowing the appeals, the Tribunal made the following observations :

" We must, therefore, set aside the orders passed u/s 10A by the Excess Profit Tax Officer. If the department thinks that the provisions of Section 10A should be applied to the incorporation of two companies of Sir Homi Mehta and his four sons with the object of reducing the profit of the Mill Stores Trading Co. of India Ltd., it will no doubt issue notices to all the three companies and then determine whether the main purpose for which the two companies were incorporated was the avoidance or reduction of liability of the business carried on by the Mill Stores Trading Co. of India Ltd., to the excess profit tax."

3. The appeals were disposed of by the Tribunal on February 11, 1950.

4. Thereafter, after a lapse of 24 years, the petitioner received a notice u/s 15 of the Act, issued by the 1st respondent, purporting to take action for reassessment of the petitioner for the relevant chargeable accounting period. The notice dated November 14, 1973, inter alia, states that respondent No. 1, in consequence of definite information which had come into his possession, had discovered that the profits of the chargeable accounting period for the relevant years had escaped assessments. The petitioner, through its chartered accountants, called upon respondent No. 1 to indicate as to what was the definite information in his possession which had led him to issue the notices u/s 15 of the Act. Respondent No. 1 did not disclose the information in his possession. Thereafter, the petitioner filed the present proceedings under Article 226 of the Constitution of India on April 15, 1974, challenging the legality and validity of the notices issued by respondent No. 1 and which are annexed collectively as Ex. C to the petition.

5. Mr. Patil, the learned counsel appearing in support of the petition, contended that the 1st respondent had no jurisdiction to issue notices u/s 15 of the Act unless he discovered, in consequence of definite information, that profits chargeable to tax under the provisions of the Act had escaped assessments. The learned counsel submitted that there was no information, much less definite information, in the possession of respondent No. 1 and the notices were issued after 24 years threatening to reopen the assessment merely on some stray observation by the Income Tax Appellate Tribunal while disposing of the two appeals preferred by the private companies. In answer to the petition, on behalf of the respondents, a return has been filed and what is disclosed as definite information are only the observations of the Tribunal which are quoted hereinabove. In my judgment, by no stretch of imagination, the observations made by the Income Tax Tribunal, while disposing of the appeals to which the petitioner was not a party, can be said to be a definite information. Even the observations, in no way, support the action taken by respondent No. 1 in issuing notices u/s 15 of the Act and in my judgment, the exercise of jurisdiction by respondent No. 1 by issuing the notices was totally misconceived and

irregular. The notices issued by respondent No. 1 deserve to be quashed.

6. In the result, the petition must succeed and the rule is made absolute in terms of prayer (a) of para. 14 of the petition. In the circumstances of the case, there will be no order as to costs.