**Assistant Commissioner of Vs. Canara Food Processors (P.) Ltd.**

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**Court** : Income Tax Appellate Tribunal ITAT Pune

**Decided On :** Mar-12-1993

**Reported in** : (1993)45ITD500(Pune.)

**Judge** : T Natarajachandran, T Bukte, J Member

**Appellant** : Assistant Commissioner of

**Respondent** : Canara Food Processors (P.) Ltd.

**Judgement** :

1. These appeals by the revenue are consolidated and disposed of by a common order for the sake of convenience, as they relate to same assessee and involve common issue.

2. These appeals pertain to assessment years 1984-85, 1985-86, 1986-87 and 1987-88 and arise out of the common orders passed by the CWT (Appeals), Belgaum for these years dated 26-9-1991. wherein he has cancelled the re-assessments made by the Assessing Officer for the assessment years 1984-85, 1985-86 and 1986-87 and allowed the appeal for the assessment year 1987-88. According to the CWT (Appeals), the Assessing Officer had no fresh material enabling him to re-open the assessments. Even after re-opening, the assets brought to tax would have been exempt under Section 40 of the Finance Act, 1983. Revenue is in appeal on the following common grounds, viz. : (1) The order of the CWT (Appeals) is opposed to law and facts of the case.

(2) The CWT (Appeals) erred in cancelling the assessment on the ground that the Assessing Officer had no fresh material enabling him to re-open the assessment.

(3) That CWT (Appeals) has failed to consider the fact that even audit objection is an information enabling the Assessing Officer to re-open the assessment.

(4) The CWT (Appeals) has failed to consider the fact that no evidence has been produced by the assessee to show that the guest house was used actually as staff quarters for the employees drawing less than Rs. 18,000 salary per year and also to show that the assessee's main activity is of converting lands into plots and selling them as stock-in-trade.

In view of the aforesaid grounds taken, it was prayed that the orders of the CWT (Appeals) should be cancelled and those of the Assessing Officer be restored.

3. The relevant facts are that the assessee, a private limited company, was assessed to wealth-tax for the assessment year 1984-85 on 14-7-1987 under Section 16(3) on a net wealth returned Rs. 43,600 which was accompanied by balance sheet of the company. The assessment for the assessment year 1985-86 was completed on the same wealth on the same day, accompanied by balance sheet of the company. The assessment for the assessment year 1986-87 was completed on the same day on a net wealth returned Rs. 88,200 accompanied by balance sheet of the company.

In other words, the net wealth shown by the assessee for these three years based on the balance sheet was accepted by the Assessing Officer.

The assessment for the assessment year 1987-88 was completed under Section 16(3) on a net wealth of Rs. 40,82,356.

4. Later on, the Assessing Officer re-opened the assessments for the assessment years 1984-85, 1985-86 and 1986-87 by recording following common reasons in the order sheet which read as under: 10-3-1989: By reason of assessee's failure to disclose fully and truly all materials necessary for assessment, the wealth chargeable to tax has escaped assessment within the meaning of Section 17(1)(a) of the WT Act. Issue notice under Section 17.

The assessee filed returns of wealth in response to notice under Section 17 on 30-3-1989 declaring net wealth originally assessed for the assessment years 1984-85, 1985-86 and 1986-87. According to the Assessing Officer, the value of other assets liable to tax, such as guest house, non-agricultural lands etc. were omitted to be declared in the original returns filed for these years and therefore, wealth had escaped assessment within the meaning of Section 17.

5. The learned counsel for the assessee contended that action under Section 17 taken was not correct as the amendment to Section 40(3) made by the Finance Act, 1988 specified that the assets held as stock-in-trade were not liable to Wealth-tax and that would support the case of the assessee. This contention was rejected by the Assessing Officer on the ground that the said amendment was effective from 1-4-1989 and therefore, applicable from the assessment year 1989-90 onwards. As a consequence, the Assessing Officer included the value of guest house and non-agricultural lands at Rs. 51,923 and Rs. 17,61,441 for the assessment year 1984-85 and also for other years as detailed separately in the assessment orders. At this juncture, it is necessary to clarify that the Assessing Officer has passed only a regular assessment for the assessment year 1987-88 under Section 16(3) and not re-assessment under Section 16(3) read with Section 17 of the Wealth-tax Act.

6. On appeal the learned counsel for the assessee contended that in view of the decision of the Supreme Court in the case of Indian and Eastern Newspaper Society v. CIT [1979] 119 ITR 996, an opinion of the Internal Audit Party of the Income-tax Department on a point of law cannot be regarded as 'information' for the purpose of re-opening an assessment. Reliance was also placed on the decisions in the case of Mohini Bai M. Sarda v. ITO [1991] 190 ITR 541 (Kar.) wherein it was held that formation belief by the ITO must have a nexus to the failure of the assessee to disclose true and full particulars and in the case of Trustees of Seth Hemant Bhaguhhai Trust v. CWT [1991] 190 ITR 494 (Bom.) wherein it was held that the AAC's order cannot be construed as "information". Relying on these rulings, it was urged that "information" enabling the Assessing Officer to re-open the assessment under Section 17(1)(b) was not present.

7. As regards action under Section 17(1)(a), the contention of the learned counsel for the assessee was that there was full and true disclosure in the original returns. On merits, he contended that, what is alleged to be a guest house is actually a staff quarter occupied by the employees drawing salary of less than Rs. 18,000 per year.

Non-agricultural land said to have escaped assessment is actually the appellant's stock-in-trade and has been fully shown as such in the returns even at the time when the original assessments were made. The stand taken by the assessee in contemporaneous Income-tax proceedings was that the assessee had converted its vast agricultural lands into plots, after due authorisation by the Revenue Authorities and stalled trading in these plots and declared income from such activities for Income-tax purposes.

8. After considering the aforesaid arguments and perusing the details filed in the paper compilation wherein copies of statements of computation of net wealth have been filed, the CWT (A) observed that he was convinced that the Assessing Officer had no fresh material enabling him to re-open the assessments. On merits, he further observed that even after reopening the assessments, the assets brought to tax would have been exempt under Section. 40 of the Finance Act, 1983. For all these reasons, he cancelled the re-assessments and restored the original assessments made for the assessment years 1984-85 to 1986-87.

The same logic was followed in allowing the appeal for the assessment year 1987-88 with the result these assets, namely, guest house and non-agricultural lands included in the re-assessments were excluded being exempt.

9. At the time of hearing, the learned counsel for the assessee filed two bulky paper compilations namely, Book Nos. 1 and 2 and also a small paper compilation containing summary of points together with relevant case laws. The learned counsel for the assessee referred to the show-cause notice issued by the Commissioner of Wealth-tax, Karnataka III, Bangalore, dated 1-2-1990 contained at page 68 of the paper compilation book No. 2, wherein he proposed to revise the orders passed by the Assessing Officer for the assessment years 1984-85 to 1986-87 on 14-7-1987 as they were erroneous and prejudicial to the interest of

revenue within the meaning and expression contained in Section 25(2) of the Wealth-tax Act for the following reasons, viz., the value of land held in stock-in-trade for the assessment years 1984-85 to 1986-87 were not exempt from wealth-tax for those assessment years and therefore, they should have been included in the net wealth for those years.

Further the assessee had not disclosed the value of guest house and supervisory quarters and the Assessing Officer ought to have included the value of those assets for these years under consideration. The hearing was fixed on 15-2-1990 before him. The assessee sent reply by letter dated 12-2-1990 which is contained at page 69 of the paper compilation book No. 2. The assessee pointed out that as the assessments have already been re-opened under Section 17 of the Wealth-tax Act and returns were already filed, there were no orders which could be revised under Section 25 of the Wealth-tax Act. For this proposition, certain case laws were relied on by the assessee. The proposal to revise the orders was also resisted on merits of the case stating that the assessments originally passed were neither erroneous nor prejudicial. Reliance was placed on the observation of Shri C.A.Gulanikar in the Book Law and Practice of Gift Tax and Wealth Tax contained at page 1.482 (1984 edition) wherein it has been observed that "It (wealth tax) should not fall on specified asset held as stock-in-trade". It was also contended that the amendment made by the Finance Act, 1988 was merely clarificatory and hence the value of the land has been correctly excluded by the Assessing Officer. Coming to the value of guest house and supervisory quarters, these also are exempt as these were occupied by staff drawing salary less than Rs. 18,000 per annum. Hence they are not liable to tax under Section 40(3)(vi) of the Finance Act, 1983. The CWT dropped the proceedings initiated under Section 25(2) by his order dated 21-2-1990. This order is contained at page 72 of the paper compilation book No. 2.

10. The learned counsel for the assessee urged that all the material facts were disclosed before the Assessing Officer at the time of original assessment proceedings. All the material facts were again disclosed before the Commissioner of Wealth-tax in connection with revisional proceedings taken by him even before the re-assessments were completed by the Assessing Officer. The CWT(A)

pointed out that there was audit objection which could not Constitute "information" in the light of the decision of the Supreme Court in the case of Indian & Eastern Newspaper Society (supra). The amendments made to Section 40 by the Finance Act, 1988 were clarificatory in nature and intended to remove hardships as declared by the Finance Minister in the Parliament.

Referring to page 138 of the paper compilation, book No. 1, the learned counsel for the assessee pointed out that year-wise particulars of gross area, net area sale proceeds, cost of land and development expenses and resultant profits relating to assessment years 1981-82 to 1988-89 were furnished to the Assessing Officer for income-tax purposes. The statement of the Finance Minister in the Parliament has the force of law. The decision of the Orissa High Court in the case of CIT v. Pyarilal Kasam Manji and Co. [1992] 198 ITR 110 was relied upon wherein the judgment of the Patna High Court in the case of Jamshedpur Motor Accessories Stores v. Union of India [1991] 189 ITR 70 was followed for coming to the conclusion that first proviso inserted by the Finance Act, 1987 with effect from 1-4-1988 in Section 43B of the Income-tax Act, 1961 is retrospective and clarificatory in nature.

Reliance was also placed on the decision of the Rajasthan High Court in the case of Brij. B. Lall v. WTO [1981] 127 ITR 308 wherein it has been held that audit report does not amount to "information" regarding law and cannot form basis for re-assessment proceedings. In view of the aforesaid submissions, the learned counsel for the assessee urged that the CWT(A) was quite justified in cancelling the re-assessments for the assessment years 1984-85 to 1986-87 and allowing the appeal for the assessment year 1987-88.

11. The learned departmental representative also filed copies of certain papers and relied on the judgment of the Supreme Court in the case of Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191, especially the minority view of the then Justice M. Hidayatullah for the proposition contained at page 196 of the Report that the mere production of evidence before the ITO is not enough and there may be an omission or failure to make a full and true disclosure, if some material for the assessment lies embedded in that evidence which the assessee can uncover but

does not. If there is such a fact, it is the duty of the assessee to disclose it. The Supreme Court observed that question of status, agency, the benami nature of transactions, the nature of trading and like matters may not appear from the evidence produced, unless disclosed. The Supreme Court further observed that if it be merely a question of interpretation of evidence by an ITO from whom nothing has been hidden and to whom everything has been fully disclosed, then the assessee cannot be subjected to Section 34, merely because the ITO miscarried in his interpretation of evidence. But it is otherwise if a contention which is contrary to fact is raised and the ITO is set to discover the hidden truth for himself. In the latter case, there is suppression of material facts or in other words, that lack of full and true disclosure which would entitle action under Section 34 of the Act. The learned departmental representative referred to another decision of the Supreme Court in the case of Indo-Aden Salt Mfg. and Trading Co. P. Ltd. v. CIT [1986] 159 ITR 624 for the proposition that it is well settled that the obligation of the assessee is to disclose only primary facts and not inferential facts. If some material for the assessment lay embedded in the evidence which the revenue could have uncovered but did not, then it is the duty of the assessee to bring it to the notice of the assessing authority. It is immaterial whether the failure to disclose is deliberate or inadvertent. But if there is omission to disclose material facts, then subject to other conditions, jurisdiction to reopen is attracted. In other words, the minority view of the then Justice M. Hidayatullah expressed in the case of Calcutta Discount Co. Ltd. (supra) was followed in the later case of Indo-Aden Salt Mfg. & Trading Co. P. Ltd. (supra).The learned departmental representative then referred to another decision of the Supreme Court, consisting of 4 Judges, in the case of CIT v. Glllandres Arbuthnot and Co. [1973] 87 ITR 407 (SC) at 408 for the proposition that so far as the primary facts are concerned, it is the assessee's duty to disclose all of them including particular entries in the account books, particular portions of documents and documents and other evidence which could have been discovered by the assessing authority from the documents and other evidence disclosed.

The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, it is for him to decide what inferences of facts could be reasonably drawn and what legal

inferences have ultimately to be drawn. In this connection, he has pointed out that the plea of disclosure of all material facts in the original assessments as well as before the Commissioner of Wealth-tax in connection with revisional proceedings was not relevant. According to him, the touch stone for consideration is the original assessment and the materials furnished at that time.

12. As regards the decision of the Supreme Court in the case of Indian & Eastern Newspaper Society (supra) relied upon by the learned counsel for the assessee, he submitted that mere mention of the audit party that the non-agricultural land escaped assessment constituted "information" though interpretation of law by the audit party was not information. In the instant case, the assessments were re-opened for non-disclosure of material facts. He made reference to Clause (v) of Sub-section (3) of Section 40 of the Finance Act, 1983 which re-imposed wealth-tax liability on closely held companies and which deals with a specified asset, namely, land other than agricultural land. In the case of the assessee, non-agricultural land was admittedly held to be stock-in-trade. It is for this reason the Assessing Officer has re-opened the assessment for the earlier three years under consideration and also in respect of value of the guest house, though value of the guest house is shown at cost at Rs. 60,288 in the balance sheet as on 31st March, 1984 and other balance sheets for other assessment years. The value was not shown in the statements accompanying the returns of wealth. He referred to the Certificate given by M/s U.G. Lad & Co., Chartered Accountants dated 27-11-1992 stating that they visited, obtained information and were satisfied that the staff quarters and supervisory staff quarters appearing on the assets side of the balance sheet are used by the permanent supervisory staff stationed at site. Further the guest house mentioned in the balance sheet is also actually staff quarters which are used by the company's temporary employees drawing salary less than Rs. 18,000 per annum. The auditors also certified that on verification of the relevant books of accounts and salary registers of the company, it was found that the company has no staff drawing salary of Rs. 18,000 or more per annum as could be seen from the figures of salaries debited to the profit and loss account for the relevant years for which total salary of the employees were furnished for these years under consideration.

The learned departmental representative strongly objected to this Certificate given by the Chartered Accountants, because it is self-serving document. Further he contended that the amendment made to Section 40 by the Finance Act, 1988 is effective from 1-4-1989 as seen from the Board's Circular No. 528 dated 16-12-1988 at para 51.12 (176 ITR St. 198). He also contended that the Finance Minister's statement in the Parliament is not law. He referred to certain correspondences between the authorities stating that there was no interpretation given by the audit party and the audit party merely pointed out the omission of assets to be brought to wealth-tax, but the particular audit objection raised by the audit party was not furnished.

13. In reply, the learned counsel for the assessee submitted that amendment to Section 40 of the Finance Act, 1983 is retrospective in nature as held by the Courts in respect of amendment to Section 43B made by Finance Act, 1987. In the balance sheet, asset of guest house was shown and the non-agricultural land held as stock-in-trade was also shown. It was also stated before the CWT that guest house is used by the employees drawing less than Rs. 18,000 per annum and this information was available before the Assessing Officer before he finalised the reassessments because a copy of order of the CWT was endorsed to the WTO also.

14. We have duly apprised the rival submissions, perused the paper compilations filed by both the parties and carefully considered the impugned orders of the authorities. It is undisputed that at the time of original assessments, the assessee had filed the relevant balance sheet as on 31-3-1984, 31-3-1985, 31-3-1986 and 31-3-1987 based on the report of Shri U.G. Lad of M/s U.G. Lad & Co., Chartered Accountants and which were also signed by the Chairman and Director of the company.

These documents are contained at pages 9 to 12, 13 to 16, 17 to 20 and 21 to 24 of the paper compilations relating to assessment years 1984-85, 1985-86, 1986-87 and 1987-88 respectively wherein the specified assets are duly disclosed which are necessary for assessment.

There is also separate computation chart attached to wealth-tax returns filed for each of these years. The text of Section 40 of the Finance Act, 1983 is annexed to the Wealth-tax Act, 1957 which is a self-contained code by itself so far as it relates to levy of wealth-tax on closely held companies. Sub-section (1) of Section 40 empowers levy of wealth-tax from assessment year 1984-85 in respect of net wealth on the corresponding valuation date of every specified company at the specified rate of tax. Sub-section (2) provides the methodology of computation of net wealth. According to this provision, the net wealth of a company shall be the amount by which the aggregate value of all the assets referred to in Sub-section (3) wherever located belonging to the company on the valuation date is in excess of the aggregate value of all the debts owed by the company on the valuation date which are secured on or which have been incurred in relation to the said assets. This provision is similar to the definition of net wealth contained in Section 2(rn) of the Wealth-tax Act, 1957.

Therefore, the balance sheet is a primary document for the purpose of assessment from which all the special assets and liabilities could be ascertained for the purpose of computation of net wealth.

15. As regards the guest house, though the value thereof is shown in the balance sheet on the respective valuation dates, it was not reflected in the statement of net wealth accompanying the returns. The fact that the said guest house was actually used as a residential quarter by the temporary staff drawing salary of less than Rs. 18,000 per annum and therefore, such asset was not to be subjected to Wealth-tax was ably canvassed by the learned counsel for the assessee before the CWT in connection with revisional proceedings taken by him under Section 25 of the Wealth-tax Act for the very same years under consideration and which were later on dropped by him by his order dated 21-2-1990. A copy of the said order was also endorsed to the Assessing Officer concerned.

16. As regards non-agricultural land, the assessee has not shown it as an asset in the balance sheet, but appended a Note to the computation statement which reads as under: Please turn to page 1.482 under paragraph heading 'specified assets' - Law & Practice of Gift Tax & Wealth Tax (1984 Edition) by C.A. Gulanikar : It

(Wealth Tax) should not fall on specified asset held as stock-in-trade.

Similar Note has been appended in the respective computation statement for Wealth-tax for other years under consideration.

17. In order to appreciate the stand taken by the assessee, we have to refer to the contemporaneous proceedings taken in the income-tax. Paper compilation book No. 2 filed by the assessee contains relevant correspondences exchanged between the Assessing Officer and the assessed which would serve as a backdrop of the case. In connection with the assessment for the assessment years 1983-84 and 1984-85, in letter dated 9-3-1988 contained at page 12 of the paper book No. 2 the Income-tax Officer has called for the details of development expenses and also office expenses of Rs. 30,000 each incurred because the revised return was filed for the assessment year 1982-83 by adjusting the interest payment of Rs, 59,446 which was wrongly debited to development expenses account instead of profit and loss account for that year. It is for this reason the ITO has' called for a copy of the development expenses account and also clarification of the position.

Similarly for the assessment years 1985-86 to 1987-88, the ITO by letter dated 9-3-1989 required the assessee to furnish details of actual expenses incurred on the industrial plots. In particular for the assessment year 1987-88 the assessee has enhanced the value of closing stock and the ITO required the reasons for such enhancement. In last para of the said letter, the ITO requested the assessee to inform the nature of business activity conducted during the above three years.

This letter is contained at page 13 of the paper compilation book No.2, The assessee in its letter dated 4-4-1988 (vide pages 14 to 16 of the paper compilation book No. 2) pointed out in para 1 of its letter that the company's business is that of developing industrial plots and selling them to customers mostly from Bombay and as such the Company has to maintain an office in Bombay to get prospective buyers of industrial plots. Office expenses claimed represented Bombay office rent at the rate of Rs. 2,500 per month. Office expenses related to agriculture for both the years were also separately shown in Schedule '8' to the profit and loss account under the head "Agricultural expenses". The assessee also pointed out the

reasons why revised return was filed for the assessment year 1982-83 on account of debit of interest and why the stock-in-trade has been reduced for the assessment year 1984-85 by passing reverse entries to the interest account which has been wrongly debited to the development expenses account and by debiting it to the profit and loss account for the assessment year 1984-85. As requested by the ITO, a copy of the Non-agricultural lands (Industrial Plots) Account for the year ended 31-3-1982 was also enclosed by way of clarification. Reference is also to be made to another letter dated 4-4-1989 written by the assessee to the Assistant Commissioner of Income-tax furnishing development expenses incurred for the assessment years 1985-86 to 1987-88. As a matter of fact, no expenses were incurred for the assessment years 1985-86 and 1986-87, but only for the assessment year 1987-88 expenses were incurred at Rs. 1,49,778 for which date-wise break up details were furnished. Value of the closing stock (non-agricultural land) as on 1-4-1986 as well as on 31-3-1987 was furnished. It is relevant to note that in para 5 of the said letter, the nature of the business activities carried on for these three years as consisting of developing industrial plots and selling them was pointed out by the assessee.

18. Even in the revisional proceedings taken by the CWT on 1-2-1990, reply of the assessee dated 12-2-1990 clarified that position with the result the proceedings were dropped by him on 21-2-1990 and a copy of the said order has been endorsed to the concerned WTO and therefore, nature of the transactions is within his knowledge even before he has finalised re-assessment. The assessee has also left a note for excluding the land held as stock-in-trade by referring to the commentary of the author Shri C,A. Gulanikar which at best represented one view of the law regarding exemption of stock-in-trade from levy of wealth-tax.

19. The record shows that on the very next date, viz., 9-3-1989, when the Assessing Officer called for details of development expenses for the assessment years 1985-86 to 1987-88 and the nature of business activity carried on by the assessee, he has also recorded reasons for re-opening the assessments under Section 17(1)(a) for these years for the reason that on account of assessee's failure to disclose fully and truly all materials necessary for assessment, wealth has escaped assessment.

20. The conditions precedent for re-opening the assessment under Section 17(1)(a) are that the Assessing Officer should have reasons to believe that wealth has escaped assessment by reason of omission or failure on the part of the assessee to make a return of wealth or to disclose fully and truly all material facts necessary for his assessment for the year. The Supreme Court has highlighted what are the material facts which are required to be disclosed so as to satisfy the requirement- of law which varies from case to case in the case of Calcutta Discount Co. Ltd. (supra). The Supreme Court was concerned with the crucial aspect of determination of the nature of share transactions effected by that company so as to come to the conclusion whether it was a realisation of its investments or it was a regular business transaction in shares. In this connection, the Supreme Court observed that the duty of the assessee is to disclose fully and truly of all primary and material facts. At page 199 of the Report, it is pointed out that "What facts are material and necessary for assessment differed from case to case". The majority judgment was that "It is the duty of the assessee to disclose all the facts which have a bearing on the question, but whether the assessee had the intention to make a business profit as distinguished from the intention to change the form of the investments is really an inference to be drawn by the assessing authority from the material facts taken in conjunction with the surrounding circumstances. The law does not require the assessee to state the conclusion that could reasonably be drawn from the primary facts. The question of the assessee's intention is an inferential fact and so the assessee's omission to state his "true intentions behind the sale of shares" cannot by itself be considered to be a failure or omission to disclose any material fact within the meaning of Section 34".

In other words, it was the duty of the Assessing Officer to decide whether the sales by an investment company should in law be treated as trading transactions and the profits made from the sales are trading profits liable to tax, but no duty lay on the company to admit that these transactions were by way of trade. The majority view tilted the decision in favour of the assessee in that case, though there was minority view against the assessee. In judicial matters, the majority view always prevails over the minority view. The minority view is that "the questions of status, agency, the benami nature of transactions, the nature of trading and like matters may not appear from the evidence produced unless disclosed. If it be merely a

question of interpretation of evidence by an Income-tax Officer from whom nothing has been hidden and to whom everything has been fully disclosed, then the assessee cannot be subjected to Section 34, merely because the ITO miscarried in his interpretation of evidence. But it is otherwise if a contention which is contrary to fact is raised and the ITO is set to discover the hidden truth for himself. In the latter case, there is suppression of material facts, or in other words, that lack of full and true disclosure which would entitle action under Section 34 of the Act".

21. Applying the aforesaid judicial dictum in the case of the assessee, it cannot be said that the assessee has not disclosed fully and truly the specified asset, namely, guest house. The assessee has not either claimed exclusion or exemption thereof in the statement of wealth accompanying the returns. Therefore, at once the first impulse of the Assessing Officer is to include the aforesaid specified asset in the net wealth of the company, there being no claim of exemption or exclusion coming-forth from the assessee in this regard. In this context, therefore, the questions contemplated by minority view in the case of Calcutta Discount Co. Ltd. (supra) also do not come into play.

Similarly, in the case of another specified asset, namely, non-agricultural land, no doubt the assessee has left a Note (supra) claiming exclusion by relying on the opinion of the author of text book on wealth-tax. In the backdrop of income-tax proceedings wherein the exact nature of the transactions in the non-agricultural land and the details of development expenses were enquired into and satisfied by the Assessing Officer and those proceedings taken in conjunction with the material furnished for wealth-tax assessment constituted full and true disclosure of material facts. At best as held by the Assessing Officer, the exclusion of non-agricultural land held as stock-in-trade would apply from the assessment year 1989-90 and onwards and not for earlier years. The import or the significance of the Note appended by the assessee in the computation statement of wealth brought home all the facts relevant for specified asset and it is for the Assessing Officer to draw inferential fact or conclusion therefrom. So it is purely a question of rejecting the claim of the assessee on the basis that exclusion of the non-agricultural land held as stock-in-trade is not applicable for the assessment years 1984-85 to 1987-88. Viewed from this angle, there is no failure on the part of the assessee to disclose

fully and truly all material facts necessary for assessment.

22. At the time of hearing, the learned departmental representative referred to the decision of the Supreme Court in the case of Indo-Aden Salt Mfg. & Trading Co. P. Ltd. (supra), wherein the minority view expressed in the case of Calcutta Discount Co. Ltd. (supra) has been followed. In that case the facts of the case showed that the Supreme Court was concerned with the determination of the specific nature of the work, whether the reservoirs, salt pans etc., are of masonry work or of earth work so as to apply the correct rate of depreciation and consequently, whether there was under assessment or not. Originally the ITO allowed depreciation at 6 per cent which was available only to assets constructed of masonry and not of earth work. The assessment was re-opened under Section 147(a) and the question was whether the excessive depreciation was allowed and income had escaped assessment for those years owing to the failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment.

The Supreme Court held that if some material for the assessment lay embedded in the evidence which the revenue could have uncovered but did not, then it is the duty of the assessee to bring it to the notice of the assessing authority. The assessee knows all the material and relevant facts - the assessing authority might not. If there is omission to disclose material facts, then, subject to other conditions, jurisdiction to reopen is attracted. The relevant portion at page 627 of the Report is required to be noticed: It is the admitted position that the assessee had not disclosed either by a valuation report or by a statement before the ITO as to what portion consisted of earth work and what portion or proportion consisted of masonry work. For the purpose of calculating depreciation, that indubitably was a material fact. If excess depreciation has been allowed on that basis, i.e., that the entirety of the work consisted of masonry work, income might have been under-assessed. The ITO can reasonably be said to have material to form that belief. That position is also well-settled by the scheme of the section and concluded by the authorities of this Court.

Since the assessee in that case has not disclosed such material fact, the re-opening was justified by the Supreme Court. Though there is no quarrel over the

ruling in that case, in our opinion, that ruling would not apply to the facts of the assessee's case.

23. Another decision relied upon by the learned departmental representative in the case of Glllandres Arbuthnot & Co. (supra) is also not applicable to the facts of the assessee's case.

24. We shall now consider the conditions precedent and prerequisite for issuing notice under Section 148 of the Income-tax Act, 1961. The Supreme Court in the case of ITO v. Lakhmani Mewal Das [1976] 103 ITR 437, page 439 of the Report laid down the following criteria, viz. : Two conditions have to be satisfied before an ITO acquires jurisdiction to issue notice under Section 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz., (i) the ITO must have reason to believe that income chargeable to tax has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return under Section 139 for the assessment year to the ITO, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must co-exist to confer jurisdiction on the ITO. It is also imperative for the ITO to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment year, the Commissioner should be satisfied on the reasons recorded by the ITO that it is a fit case for the issue of such notice. The duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the ITO of the account books or other evidence from which material evidence could with due diligence have been discovered by the ITO will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the ITO to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the ITO with regard to the inference which he should draw from the primary facts. If an ITO draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.

From the aforesaid extract, it is imperative that the Assessing Officer should record his reasons for initiating proceedings as required under Section 148(2). The Assessing Officer has recorded the reasons as under: By reason of assessee's failure to disclose fully and truly all materials necessary for assessment, the wealth chargeable to tax has escaped assessment within the meaning of Section 17(1)(a) of the WT Act. Issue notice under Section 17.

From the aforesaid extract, it is seen that the Assessing Officer has not pointed out any primary fact relevant for assessment which the assessee has failed to disclose fully or truly. Therefore, the conclusion drawn by the Assessing Officer that wealth chargeable to tax has escaped assessment under Section 17(l)(a) has no rational connection or relevant bearing on the formation of such belief. The Supreme Court at page 437 of the Report observed that "rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts". The Supreme Court further observed that "The reason for the formation of the belief must be held in good faith and should not be a mere pretence". From the reasons recorded, we have to make a pertinent observation that the reason for formation of the belief of escapement of net wealth was totally lacking in the reasons recorded by the Assessing Officer.

Therefore, the formation of belief that wealth has escaped assessment has no rational connection or relevant bearing on the formation of the belief. In fact, there is no material indicated or shown in the reasons recorded for entertaining the reason that there was failure on the part of the assessee to disclose all material facts fully and truly necessary for assessment. As a consequence, the ratio of the Supreme Court in the case of Lakhmani Mewal Das (supra) applies squarely and if so, the inevitable conclusion to be drawn is that the assumption of jurisdiction under Section 17(1)(a) was not justified in law and therefore, it is not sustainable. It is pertinent to highlight the observation of the Supreme Court at page 439 bottom according to which "If an ITO draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that

inference would not justify initiation of action for reopening assessment". This observation fits in with the facts of the case, inasmuch as the inference drawn by the Assessing Officer in the original assessment proceedings was sought to be reversed in the re-assessment proceedings because original inference appeared to be erroneous. Thus the very assumption of jurisdiction is based on mere change of opinion and therefore, the Assessing Officer was not justified in initiating action for reopening the assessment.

25. Coming to the merits of the case, the case of the revenue is that the non-agricultural land held as stock-in-trade came to be exempt by the amendment made by the Finance Act, 1988 with effect from the assessment year 1989-90 and onwards and not for the earlier years under appeal. In fact, this is the burden of song of the CWT, as seen from his revisional proceedings. It was also the burden of song of the Assessing Officer in his re-assessment which in fact echoes the view of the CWT reflected in the show-cause notice for the proposed revision of the original assessments made by the Assessing Officer for these years under appeal. Having taken an inference that the non-agricultural land was not liable to tax, the reopening of assessment to include such non-agricultural land as a taxable asset is nothing but mere change of opinion and in the absence of any other material fact coming to the possession of the Assessing Officer, there was no justification for reopening the assessments. As regards the specified asset, guest house, as we have already indicated earlier, this asset was included in the balance sheet filed for these years. The assessee has not claimed any exemption or exclusion thereof. Therefore, the only reasonable conclusion that could be drawn is that the Assessing Officer had applied his mind on this specified asset and yet did not include it in the net wealth. There is no other material or fact in possession of the Assessing Officer as reflected in the reasons recorded for reopening the assessments and therefore, it is also a case of change of opinion and in that event, there is no justification for initiation of action for reopening the assessment as ruled by the Supreme Court in the case of Lakhmani Mewal Das (supra).

26. The stand of the assessee was that the amendment made by the Finance Act, 1988 in Section 40 of the Finance Act, 1983 would be retrospective and would be

applicable for the assessment years under appeal by relying on the judgments of the Patna High Court in the case of Jamshedpur Motor Accessories Stores (supra) and Calcutta High Court in the case of CIT v. Jagannath Steel Corpn. [1991] 191 ITR 676, which were applicable to Section 43B. Be that as it may. In the most recent judgment of the Karnataka High Court in the case of CWT v. Prakashi Talkies (P.) Ltd. [1993] 112 Taxation 500, it has been held that the amendment to Section 40(3)(vi) of the Finance Act, 1983 made by the Finance Act, 1986 was certainly curative and therefore normally could be declared as declaratory of existing law. In that case, the cinema house belonging to that assessee was accordingly excluded from the building or land appurtenant thereto which was included for computation of the wealth-tax. On the same basis, guest house shown as an asset by the assessee, but established by the assessee as residential quarters of temporary employees drawing salary of less than Rs. 18,000 per annum as supported by the Certificate given by Shri U.G. Lad of M/s U.G. Lad & Co. C.As., on the basis of books of accounts and evidence is also required to be excluded from the net wealth. Though this Certificate has been produced after re-assessments were made, it only testifies to the fact that the fact was already existing then when the original assessments as well as reassessments were made. Therefore, it is not a question of production of new evidence inasmuch as the assessee has taken consistent stand in this regard before the CWT in connection with revisional proceedings and also before the CWT(A). In other words, the amendment made by the Finance Act, 1988 to Section 40 was held to be retrospective and applicable in the assessment years 1984-85 to 1985-86 in the case of Prakashi Talkies P. Ltd. (supra). Following most respectfully the only ruling of the aforesaid Karnataka High Court as on date on this subject which has a binding force on us, we hold that the proviso to Sub-section (3) of Section 40 of the Finance Act, 1983 inserted by the Finance Act, 1988 is retrospective in nature and is applicable for the assessment year 1984-85 onwards and applies to all the years under consideration in appeal. As a consequence, it has to be held that the non-agricultural land held as stock-in-trade is exempt from wealth-tax from the assessment year 1984-85 onwards in view of the proviso inserted by the Finance Act, 1988.

27. When this decision was pointed out to the learned departmental representative, he merely stated that the fact that the amendment made by the Finance Act, 1988 was operative from 1-4-1989 only as clarified in the Circular No. 528 dated 16-12-1988 clarifying the amendments was not brought to the notice of the High Court. This submission is only stated to be rejected for the simple reason that the second question referred to their Lordships of the Karnataka High Court for opinion under Section 27(1) of the Wealth-tax Act reads as under: 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amendment to Section 40(3)(vi), Finance Act, 1983, by Finance Act, 1988 was declaratory of the law as it always was and that it had retrospective operation for the assessment pertaining to 1984-85 and 1985-86 From the aforesaid question, it is seen that retrospectiviry of the amendment was very much in question which did pre-suppose that, it was operative prospectively and therefore, there is no force in the contention of the learned departmental representative.

28. As regards "information" coming into possession of the Assessing Officer in terms of Section 17(1)(b) of the Wealth-tax Act analogous to Clause (b) of Section 147, we find from a few correspondence taken place from the Asstt. Commissioner of Income-tax, Special Audit Party, Panaji addressed to the Asstt. Commissioner of Income-tax, Cir. I, Margao and vice versa that the Asstt. Commissioner of Income-tax, Special Audit Party pointed out that the amendment to Section (3) made by the Finance Act, 1988 is applicable for the assessment year 1989-90 and onwards and not retrospectively. For this proposition, he has relied on para 51.12 of the CBDT Circular No. 528 dated 16-12-1988. The conclusion of the Special Audit Party is audit objection raised for the assessment years 1984-85 to 1987-88 was perfectly correct. Though the Special Audit Party's objection under consideration was specifically insisted upon and required to be produced, the same was not furnished by the department for reasons best known to it. Despite the correspondence with the concerned officer, the position remained the same. Therefore, prima facie, from the copies of correspondence produced by the learned departmental representative, it appears that the audit has pointed out that the amendment made by the Finance Act, 1988 by inserting proviso thereto in Section (3) of the Finance Act.

1983 is applicable for the assessment year 1989-90 and onwards and not for the earlier assessment years 1984-85 to 1987-88. So we could proceed on the basis, in the absence of relevant Special Audit Party's objection, that the Special Audit Party has pointed out only the retrospectivity of the said amendment and as a consequence applicability of the provision prospectively and not retrospectively, as clarified in para 51, 12 of the Circular No. 528 dated 16-12-1988.

The date of objection of the Audit Party is not known. The reason for reopening the assessment recorded by the Assessing Officer is dated 10-3-1989. In the latest correspondence from the concerned Assessing Officer dated 4-2-1993, it is stated that the assessments were re-opened on the basis of audit objection. Therefore, it is clear that the assessments were re-opened under Section 17(1)(b) of the Wealth-tax Act and not under Section 17(1)(a). Copies of the correspondence filed by the learned departmental representative indicated that the Special Audit Party has pointed out that the amendments made by the Finance Act, 1988 in Section (3) of Finance Act, 1983 by inserting proviso are operative from the assessment year 1989-90 as a result of which non-agricultural lands held as stock-in-trade would be exempt from the assessment year 1989-90 onwards. Therefore, we can presume that the Special Audit Party has only pointed out the prospectivity of the said amendment and not retrospectivity as claimed by the assessee. Be that as it may. Inasmuch as the Assessing Officer has completed the original assessments under Section 16(3) after considering the very same material and completed the assessments excluding the guest house and non-agricultural land from the net wealth of the assessee, reopening of the assessments to include those specified assets is nothing but mere change of opinion though on the basis of audit objection. It is not. as if the Assessing Officer was not aware of the taxability of the aforesaid specified assets for the years under consideration, but on the other hand, he would be presumed to have considered and excluded them from the net wealth. In other words, no other information has come into possession of the Assessing Officer which was not already there on the record when the original assessments have been completed. In the case of Indian & Eastern Newspaper Society (supra) which is concerned with re-assessment under Section 147(b) of the Income-tax Act, 1961, the Supreme Court held that "opinion of the Audit Party on a point of law cannot be regarded as information enabling the Income-tax

Officer to initiate re-assessment proceedings under Section 147(b). The ITO had, when he made the original assessment, considered the provisions of Sections 9 and 10 of the Indian Income-tax Act, 1922. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him". Assuming, in the absence of audit objection per se that the audit has not expressed any opinion or interpreted any provisions of law, nonetheless the action of the Assessing Officer in initiating re-assessment proceedings under Section 17(1)(b) by taking a different view vis-a-vis the view taken in the original assessments completed under Section 16(3) amounted to a change of opinion on. material already considered by him. Thus the ratio of the Supreme Court in the case of Indian & Eastern Newspaper Society (supra) applies with equal force to the case of the assessee. Therefore, even the re-assessment under Section 17(1)(b) is not justified in the facts and circumstances of the case.

29. There is yet another aspect which requires to be highlighted in this connection. The original assessments were completed on 14-7-1987 and notice of re-assessment was issued on 10-3-1989 and the returns were filed on 27-3-1989 and re-assessments were completed on 22-2-1991.

The date of service of notice is not brought on record. In view of the limitation of time prescribed for completion of re-assessment under Section 17 of the Wealth-tax Act prior to its amendment by Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989, re-assessment made for the assessment year 1984-85 after 31-3-1989 and the re-assessment made for the assessment year 1985-86 after 31-3-1990 are clearly barred by limitation of time. Presumably the re-assessment made for 1986-87 is within time. In view of the aforesaid facts and circumstances of the case, the conclusion of the CWT(A) that there were no fresh materials for the Assessing Officer to reopen the assessments is warranted in law and therefore, his decision that even after reopening the assets would have been exempt under Section 40 of the Finance Act, 1983 in retrospect is quite justified and is accordingly upheld as it is unexceptionable in view of the ruling of the Kamataka High Court in the case of Prakashi Talkies (P.) Ltd. (supra) and the Supreme Court in the case of Indian & Eastern Newspaper Society (supra).

Equally, the re-assessments are also not justified under Section 17(1)(a) as purported to have been taken as per reasons recorded on the file, but the fact remains as admitted by the Assessing Officer in the latest correspondence of the Assessing Officer that the assessments were reopened only on the basis of audit objection. For all these reasons stated above, we uphold the orders of the CWT(A) and reject the common ground taken by the revenue.