INDIAN OIL CORPORATION

v.

INCOME TAX OFFICER, CENTRAL CIRCLE V,
CALCUTTA & ORS.

MAY 8, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

Income Tax Act, 1961 - S.147(1)(a) - Income escaping assessment - Initiation of proceedings for reassessment - Necessary conditions - What are.

The assessee at the relevant time was a company incorporated under the laws of the United Kingdom, and had its principal place of business in India. The assessee was all along assessed under the Indian Income Tax Act, 1922. The assessee had claimed deductions every year of certain expenses amounting to L 1,00,000 or over as administrative charges incurred by the Burmah Oil Company Limited of London for management and secretarial work carried on on behalf of the assessee in London. L 1,00,000 represented approximately 40% of the head office expenses of the London Company which, according to assessee, was a reasonable allocation having regard to the work done by the London Office on behalf of the assessee. As similar organisational work was done in London through the London Company, the London office was managing several companies and debiting prorata to the companies whose affairs they were managing and thereafter the assessment was completed on that basis.

During the assessment for the year 1953-54, the assessee had furnished in support of its claim for London Management expenses, certificate from the London Auditors that the sum specified in the certificate was reasonable having regard to the records and materials produced before the auditors, which was about 10% of the total administrative expenses incurred by the Burmah Oil Company Limited, London. The Income-Tax Officer found that such expenses debited actually in the earlier years were far in excess of this percentage. The assessee was, therefore, required to furnish a similar certificate for each of the assessment years 1957-58, 1958-59 and 1959-60. No such certificates were produced by the assessee and by three notices dated November 25, 1965 under

A s.148 of the Income-tax Act 1961, the Income Tax Officer notified that he had reason to believe that the assessee's income chargeable to tax for each of the said assessment year had escaped assessment within the meaning of s. 147(a) and he proposed to reassess the income for the said years and the assessee was required to furnish the returns.

B The assessee challenged the said notices under Art. 226 of the Constitution on the ground that there was no material to reopen the assessments. A Single Judge of the High Court quashed the notices and held that all the facts in possession of the assessee were placed before the taxing authority prior to making of the assessment; that it was for the taxing C authority either to accept the claim or to reject the claim either wholly or in part; that after having accepted the claim in spite of non-production of the relevant auditors' certificate which was asked for at one stage the revenue could not later turn round and say that the income of the assessee had escaped assessment or been under-assessed due to the D failure of the assessee to disclose those very auditors' reports and that the under assessment, if any, was due to the laches of the Revenue and not due to any act or omission on the part of the assessee.

E In the appeal filed by the Revenue, the Division Bench set aside the decision of the Single Judge, upheld the notices and held that the assessee had failed to disclose; (1) the basis of allocation of expenses; (2) correspondence between the London principal and the assessee company on the relevant subject; (3) existence of auditors' certificate fixing F percentage that would be reasonable for allocation in respect of the subsidiary companies including the assessee and, therefore, there were _prima facie_ materials to form the belief that there was failure and omission in the part of the assessee to disclose fully and truly all the relevant and material facts which led to the escapement of income or under G assessment of income of the assessee company.

Allowing the appeals of the appellant-Corporation to this Court,

HELD: 1. To confer jurisdiction under clause (a) of H s.147 of the Income Tax Act, 1961 beyond the period of four

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years but within a period of eight years from the end of the relevant year under s. 148 of the assessment year, two conditions were required to be fulfilled: first is that the Income-tax Officer must have reason to believe that the income profits or gains chargeable to tax had been underassessed or escaped assessment; the second was that he must have reason to believe that such escapement or underassessment was occasioned by reason so far as relevant for the present purpose to disclose fully and truly all material facts necessary for the assessment of that year. Both these conditions are conditions precedent to be satisfied. [1121 G-H; 1122 A-B]

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2. Section 147(a) postulates a duty on every assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, the obligation is to disclose facts; secondly those which are material; thirdly the disclosure must be full and fourthly true. [1125 C-D]

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3. What facts are material and necessary for assessment will differ from case to case. In every assessment proceedings, for computing or determining the proper tax due from the assessee, it is necessary to know all the facts which help the assessing authority in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as to certain other facts. But once the primary facts are with the taxing authority it is for him to draw inferences. It is not necessary for the assessee to draw inferences for him. [1125 D-F]

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Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta and Another, 41 ITR 191 at 199, **S. Narayanappa and Others v. Commissioner of Income-tax, Bangalore**, 63 ITR 219, **Commissioner of Income-tax, West Bengal, and Another v. Hemchandra Kar and Others**, 77 ITR 1, **Income-tax Officer, I-Ward, Hundi Circle, Calcutta and Others v. Madnani Engineering Works Ltd.**, 118 ITR 1, **Ganga Saran & Sons P. Ltd. v. Income-tax Officer and others**, 130 ITR 1 at 13, **Income Tax Officer, I Ward, Distt. VI, Calcutta and others v. Lakhmani Mewal Das**, 103 ITR 437 and **Sheo Nath Singh v. Appellate Assistant Commissioner of Income-Tax (Central), Calcutta and others**, 82 ITR 147 at 153, relied upon.

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P.R. Mukharjee v. Commissioner of Income-tax, West Bengal, 30 ITR 535 and **Hazi Amir Mohd. Mir Ahmed v. Commissioner of Income-tax, Amritsar**, 110 ITR 630, approved.

4.(i) The learned Trial Judge was right and the Appellate Court was in error in holding that there were materials from which it could reasonably be held that the assessee was guilty in not disclosing the basic facts. [1127 F]

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4.(ii) In the instant case, the assessee had all along disclosed and the Revenue was aware that London management expenses were incurred on behalf of the assessee by the London Company who were managing the affairs and doing certain works for the assessee as well as certain allied companies belonging to Burmah Oil Corporation Group. The expenses for these allied concerns were on pro-rata basis charged by the London office and a certain proportion of the expenses were allocated to different companies and they debited certain portions, i.e. these amounts were realised from the assessee and allied companies in proportion to which the London company debited them those charges. This fact was known all along to the Revenue while making the original assessment for the relevant assessment years. The audit report of the assessee company was supplied but it is not clear whether the audit report of the London company was supplied and was asked for. It is unlikely that when London company was debiting the assessee company and other companies in the audit report every year, there would be any note that such debits by which the London company got certain money which were excessive i.e. the London company realised more than it had actually incurred of the expenses. In any event, however, the amount realised would be mentioned in the audit report as a basic fact. That has been disclosed, to the Revenue at the time of the original assessment. The nature and the quantum of the work done had also been disclosed. Whether it was excessive or not was an inferential fact. The Income-tax Officer, from time to time had some doubts as to whether the entirety of the expenses debited were really incurred for the assessee company by the London company or whether that was unreasonable or excessive having regard to the magnitude of the work done by the London company but that would be a matter of opinion and on inference drawn from the amount of the work in correlation to the amount debited the fact what was done, what was being claimed by the London

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office and the difficulties in producing the accounts or the opinion of the auditors for which the Income-tax Officers had called upon the assessee were all known to Income-tax Officers at the time of making the original assessments. In spite of the same, the Income-tax Officer chose to assess the assessee in the manner he did. In the light of the opinion of the Auditors for the assessment year 1963-64 wherein his opinion that ten per cent would be reasonable charge might be good information for which the assessment of the assessee could be reopened under clause (b) but on this basis alone it could not be said that the assessee had failed to disclose fully and truly all basic facts at the time of the original assessment of the relevant assessment years. There was no evidence or allegation that such an opinion was there available with the assessee company the time of the original assessments. Even if such an opinion as opinion evidence be considered as a basic fact, a question on which no opinion is required to be expressed, there was no evidence that such opinion was with the assessee at the time or before the completion of the original assessments for the relevant assessment years. [1125 F-H; 1126 A-H; 1127 A]

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4.(iii) All the basic facts in this case were disclosed, it was however not disclosed as to what was the opinion of the Auditor, as to what is reasonable allocation share of the assessee having regard to the amount of work done on behalf of the assessee company of the London office expenses. There is no conclusive evidence that at the relevant time i.e. at the time of filing of the return before the assessments, such Auditors' opinion about the reasonableness was there. Secondly, what would be reasonable or not would be an inference of the auditor. The amount spent, the nature of the work alleged to have been done by London office on behalf of the assessee and the basis of the allocation had been explained in reply to the queries made by the Income-tax Officer before the assessment. The Income-tax Officer had asked at one point of time for the auditors' opinion. It was stated that such opinion could not be supplied. In spite of the same, the Income-tax Officer did not choose to make a best judgment assessment and did not draw any adverse inference against the assessee. It cannot, therefore, be held that there was failure to disclose fully and truly all basic facts. [1127 A-E]

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CIVIL APPELLATE JURISDICTION : CIVIL APPEAL NOS. 1189-1190 OF 1974

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From the Judgment and Order dated 7.12.1973 of the Calcutta High Court in Appln. No. 189 and 196 of 1971.

Dr. Devi Pal, Ms. M. Seal, D.N. Gupta, H.K. Datt and Miss Mridul Ray for the Appellant.

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C.M. Lodha, Dr. V. Gaurishankar, Miss A. Subhashini and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Whether the reopening of the assessments of the assessee under section 147(a) of the Indian Income Tax Act, 1961 (hereinafter referred to as the 'Act') was valid, is the question involved in these appeals by special leave from the Bench decision of Calcutta High Court dated 7th December, 1973. The assessment years involved are 1957-58, 1958-59 and 1959-60.

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It may be mentioned that on notices being issued for reopening of the assessments under section 148 of the Act under condition 147(a) of the said Act, the assessee challenged the said notices on the ground that there were no materials to initiate such reopening. Such challenge was upheld by the learned single judge of the High Court and the notices in question were quashed.

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The revenue being aggrieved preferred appeals before the division bench of the High Court. The division bench of the High Court reversed the findings of the learned trial judge and the notices were upheld. Hence these appeals.

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The assets and liabilities of erstwhile the Assam Oil Company have since then vested in the Indian Oil Corporation and on an oral application having been made on behalf of the assessee, we have directed that the name of the Indian Oil Corporation be substituted.

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The assessee at the relevant time was a company incorporated under the appropriate laws of the United Kingdom, and had its principal place of business at the relevant time in India at Digboi in the State of Assam. It carried on business, _inter alia_, in oils and lubricants. As the years involved were

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prior to the introduction of the Act in question, the assessee was all along assessed under the provisions of the Indian Income-Tax Act, 1922 (hereinafter called the '1922 Act'). In its assessment under the 1922 Act, the assessee had claimed deductions every year of certain expenses amounting to £ 1,00,000 or over as administrative charges incurred by the Burmah Oil Company Limited of London for management and secretarial work carried on on behalf of the assessee in London. For the assessment year 1951-52, it might be mentioned, the Income-tax Officer wrote a letter to the assessee asking for certain informations and one of the informations asked for was regarding London charges. The assessee was asked to furnish a schedule in respect of the London charges and also to let the Income-tax Officer know whether any reserve had been debited to this account of London charges. The letter was dated 19th December, 1952. The assessee by its letter replied to that query where it informed the Income-tax Officer that as advised in connection with the 1950-51 assessment, London charges being about £ 1,00,000 represented approximately 40% of the head office expenses of the London Company being the charges made by the Burmah Oil Company for management and secretarial work carried out on behalf of the assessee company in London covering Stores Purchasing, Accounting, Staff, Geological and other Departments. The assessee further informed the taxing authorities that it had been advised by its London office that the amount represented a reasonable allocation having regard to the work done by the London office on behalf of the assessee. As the point in question in these appeals is whether there was failure or omission on the part of the assessee it is necessary to refer in detail to the correspondence. For the assessment year 1951-52 in response to the enquiries the assessee made it clear that the London charges represented the charges made by the Burmah Oil Company which managed the assessee company along with other companies in respect of the management work and secretarial work carried out in London covering the various items indicated before. In other words as similar organisational work were done in London through the London company, the London office was managing several companies and debiting pro-rata to the companies whose affairs they were managing. The assessment was completed thereafter apparently on the said basis.

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Similarly for the assessment year 1953-54, it appears

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that there was discussion between the Income-tax Officer and the assessee and certain queries were made in respect of the London office charges amounting to £ 1,00,000 included in the trading account for 1952. The assessee by its letter dated 9th December, 1953 informed the Income-tax Officer that the assessee's London Principals had advised them that the total B expenses of the London office for 1952 amounted to £ 2,75,000 of which £ 2,55,000 was charged out to the subsidiary companies for services rendered by the parent company. It was further informed that by far the bulk of these Head Office Expenses was comprised of salaries and office rents paid, and apart from a comparatively negligible amount of work not C connected with the subsidiary companies, the whole of head office expenses might reasonably be allocated to the subsidiary trading companies. The Assam Oil Company's share of the amount charged out was £ 1,00,000 i.e. approximately 40% and the London office advised so. It was communicated to the assessee that this amount was a 'reasonable allocation having D regard to the amount of work done on behalf of the assessee company'. It was, further, stated that Assam Oil Company was the largest of the trading subsidiaries, and in addition was by far the major producing company in the group. In short the amount, according to the assessee, was a reasonable pro rata division of the total charge for Management expenses and was E in effect composed almost entirely of a proportion of salaries and rents. On the aforesaid basis the assessment was completed for the assessment year on 21st March, 1955.

For the assessment year 1954-55 by letter dated 12th July, 1956, the Income-tax Officer made certain enquiries F asking for details of services rendered and for copies of the correspondence between the assessee and its parent company "regarding fixation of the amount in 1953 at £ 1,10,000" of London expenses.

The assessee by its letter dated 14th November, 1956 G replied to the said queries. The assessee stated that the head office of this company was in common with the parent company and other member companies of B.O.C. group situated in the same building in London. The services rendered by Head Office covered the central administration and overall control. It was mentioned that B.O.C. as well as the assessee company were

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companies registered in U.K. It was mentioned by the assessee that the central accounting and preparation of final accounts were done in London. Arranging the purchase of plant and machinery stores and all other items were done by London, <u>inter alia,</u> as follows:

> "The head office of this company is in common with the parent company and other member companies of the B.O.C. group situated in the same building in London.
>
> The services rendered by Head office cover (a) the central administration and overall control. (You will bear in mind that this is a U.K. registered Company).
>
> (b) The Central accounting and preparation of final accounts.
>
> (c) Arranging the purchase of plant and machinery stores and all other items not purchased locally.
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> (d) The supply of all the advice and technological data relating to geology chemistry, engineering and kindered subjects which are essential to the routine operation of the Oil Industry.
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> The charge of £ 1,10,000 represents our share of the staff salaries, wages, fees rent rates and taxes, insurance and other expenses incurred at head office. We do not have correspondence with the parent company in this connection."

It may be mentioned that in the last sentence it was stated that the assessee company did not have correspondence with the parent company in this connection.

On 19th June, 1957, there was a letter by the Income-tax Officer asking the assessee to explain the basis of allocation of £ 1,10,000 for the year 1953. The Income-tax Officer drew attention of the assessee that the assessee had written that there was no correspondence with the parent company on this matter. The assessee was asked to explain the basis of the

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allocation and how it was fixed at £ 1,10,000 for the year 1953. The assessee was further asked to explain the item "Purchase of plant and machinery" in the list of services rendered by Head Office in additi n to the service of central administration and overall control.

B By another letter dated 3rd January, 1958, the Income-tax Officer informed the assessee that the assessee had not written what the assessee's London office had to say about basis on which the amount of £ 1,10,000 claimed as a deduction from the Indian profits, was arrived at. The Income-tax Officer further informed the assessee that in the absence of C the required particulars he would have to disallow a part of the expenses claimed and also to capitalise a portion of the remaining part as relating to purchase of plant and machinery. To this the assessee by its letter dated 16th January, 1958 informed that regarding letter referred to hereinbefore it was difficult to add to the explanation given in the previous D letter of the assessee and this position was explained in the letter dated 14th November, 1956 to the colleague of the I.T.O. in Dibrugarh. The assessee further went on to state that the assessee did not have any staff as such in London. All such staff were employed by the Burmah Oil Co. Ltd. who paid their salaries and wages and who paid all the other E expenses incurred in London. The assessee further asserted that the Burmah Oil Co. Ltd. staff was used not only on the work of this company but all of the other companies in the group. At the end of the year, the Burmah Oil Co. Ltd. estimated how much of the total expenditure it had to incur to coordinate the activities of all the group companies to which F it was applicable. This was not allocated on any fixed mathematical basis, but in proportion to the time which had been spent on the various companies affairs taking account of the relative complexity of the work on each company. In respect of the year under review, the assessee asserted that they were advised that in fact the expenses of the London G Office were such as to have justified a higher allocation to the subsidiary companies. The assessee was, therefore, unable to agree to any disallowance in respect of these expenses. The assessee further asserted that nor could it agree to the suggestion of the Income-tax Officer that some part of the salaries, wages etc. paid in London should be disallowed H merely because during the year one of the incidental services

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carried out was the purchase of equipment. The assessee asserted that London staff was employed mainly on normal administrative matters whether or not in any particular year plant or equipment was purchased.

The Income-tax Officer incidentally Mr. D.G. Pradhan wrote on 26th December, 1958 that he would be obliged if the assessee could obtain in due course auditors' certificates regarding 'reasonableness of the expenses allocated by the Burmah Oil Company Ltd. to the assessee company for supervision and control expenses incurred un U.K.' B

The assessment thereafter was completed by the said D.G. Pradhan as Income-tax Officer for 1954-55 on 15th January, 1959 i.e. within three weeks after the said letter. C

For the assessment year 1955-56, the Income-tax Officer, another incumbent namely S.S.M. Islam by a letter dated 8th October, 1956, asked for the details of the services rendered and to send a copy of correspondence between assessee and parent company regarding fixation of the amount of London charges. D

The assessee on 12th July, 1957 by a letter objected to the suggestion that London office charges were not allowable and pointed out that they had always been allowed in the past. In any event the assessee asked for time to furnish the details. E

On 16th January, 1959, Shri D.G. Pradhan, Income-tax Officer, completed the assessment for the assessment year 1955-56 allowing the claim for London charges in full. On the same day, Shri Pradhan completed the assessment for the assessment year 1956-57 and 1957-58 and allowed London charges in full. F

For the assessment year 1959-60, the assessee wrote on 27th July, 1961 to the Income-tax Officer pointing out that it did not incur any London office expenses as such. The Burmah Oil Co. Ltd. which had employed all the staff, incurred all the expenditure and passed to each subsidiary company a charge which was based on the proportion of the total work carried out in London for that subsidiary and which could be described as management charges. G H

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The Income-tax Officer, Sri G.P. Gupta completed the assessment for the assessment year 1959-60 and allowed the London charges in full.

The assessments for the years 1957-58, 1958-59 and 1959-60 were made more or less on the basis of profit and loss account of the assessee for those years, in which London Office charges had been debited.

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The assessment for the assessment year 1959-60 was completed on the basis of the Profits & Loss Account which had debited an amount of ₤ 2,50,000 of London Management expenses. The Income-tax Officer thereafter addressed three letters dated 21st October, 1965 to the assessee in respect of the assessment years 1957-58, 1958-59 and 1959-60 respectively pointing out that during the assessment for the year 1953-54, the assessee had furnished in support of its claim for London Management expenses a certificate from the London auditors that the sum specified in the certificate was reasonable having regard to the records and materials produced before the auditor. The certificate revealed that the reasonable charges in relation to the total administrative expenses incurred by the Burmah Oil Co. Ltd. London was about 10%. The Income-tax Officer further found that such expenses debited actually in the earlier years were far in excess of this percentage. The assessee, was therefore, required by the Income-tax officer to furnish a similar certificate for each of the aforesaid three years based on an examination of the records and materials, failing which it should be constrained to conclude that the claim by way of London Management fee was excessive and arbitrary. No such certificates were produced by the assessee and by three notices dated 25th November, 1965 under section 148 of the Act, the Income-tax Officer notified that he had reason to believe that the assessee's income chargeable to tax for each of the assessment years had escaped assessment within the meaning of section 147 of the Act and he proposed to reassess the income for the said years and the assessee was required to furnish the returns. The notices were issued under clause (a) of section 147 of the Act.

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The learned single judge of the High Court noted the relevant provisions of law and was of the opinion that all the facts in the possession of the assessee were placed before the

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taxing authority prior to the making of the assessment. It was held that it was for the taxing authority either to accept the claim or to reject the claim either wholly or in part. After having accepted the claim in spite of the non-production of the relevant auditor's certificate which was asked for at one stage, it was held that the revenue could not later turn round and say that the income of the assessee had escaped assessment or been underassessed due to the failure of the assessee to disclose those very auditors' reports. The learned judge felt that the underassessment, if any, was due to the laches of the revenue and not due to any act or omission on the part of the assessee and notices under section 148 had to be quashed.

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In answer to the rule nisi issued, the respondents-Income- tax Officers who affirmed the affidavits in opposition were not the Income-tax Officers who had made the original assessments nor were they the Income-tax Officers who had issued notices for the reassessment. The respondent Income-tax Officers who affirmed the affidavits in opposition could only make the statements on the basis of the information received from the records and the only way they could show cause was by repeating that in view of the materials on the records they had reason to believe that due to the failure and/or omission of the assessee to disclose fully and truly all material facts, the income had escaped assessment and they bona fide believed the same. But the report made for obtaining sanction of the Commissioner was placed before the learned Judge and the learned judge had noted that in the said report, the Income-tax Officers had pointed out that for the assessment year 1963-64, it was found from the report of the London auditors that the management fee charged by the Burmah Oil Co. Ltd., London, was about 10% of its total administrative charges and that the auditors certified for that year that percentage was reasonable. The reports of the Income-tax Officers further continued to state that a perusal of the earlier records revealed that in the years prior to the assessment years 1963-64 it had been claiming by way of London management fee amounts far in excess of the 10% certified by the auditors as reasonable for the year 1963-64. The assessee-company was, therefore, required to produce similar certificates for the earlier years but it had failed to do so on the ground that no records were maintained by the parent company on the work relating to the assessee's affairs. The

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allocation of London management fee was thus arbitrary and devoid of any basis and was only a means of avoiding taxation by debiting excessive sums by way of management fees unrelated to the extent of the services rendered. By reason of the assessee's failure, the report went on to say, to disclose the correct facts its income had been found to have escaped assessment and sanction to reopen the same was, therefore, requested. As the assessee was similarly informed by the respondent's letter that he considered that the assessee's claim for deduction of the London management expenses in the past years to be excessive in the light of the London auditor's report for the assessment year 1963-64. This, the learned judge took to be the basis for reopening of the assessment. The learned judge after referring to the relevant authorities, was of the view that reopening in this case was done as it appeared to the learned trial judge on the ground on the basis of auditors' report for the assessment year 1963-64. This might be an information which the Income-tax Officer might have received and on that basis reopen the assessment. The learned single judge was of the view that this might have been a good ground for action under clause (b) of section 147 of the said Act but it could not be treated as good ground for reopening under clause (a) of section 147 on the ground that there was failure or omission on the part of the assessee to disclose fully and truly all relevant and material facts. It is true as the learned Judge accepted the position and was reiterated here that if on the records it appeared that there were some materials to form the belief that there was omission or failure on the part of the assessee to disclose fully and truly all relevant and material facts, the initiation of the proceedings under clause (a) of section 147 cannot be questioned.

Aggrieved by the said decision of the learned trial judge, as mentioned hereinbefore, the revenue had challenged the decision before the division bench of the Calcutta High Court. The division bench after setting out the relevant facts and the contentions and after referring to the judgment of the learned trial judge and to the correspondence, observed that the assessee was guilty in the facts and circumstances of the case of not disclosing the system of certificate by the auditor of the parent company fixing what percentage would be

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reasonable for debiting the assessee company in India. It was further observed by the Division Bench that the existence of such an important material as the auditor's certificate of that nature did not appear to have been known to the Income-tax Officers at the stage when assessments were previously completed for the assessment years 1951-52 right upto 1958-59. Such a document, according to the Division Bench of the High Court, if existing would be very material document and the fact that such a document was not brought to the notice and rather misleading answers, according to the learned judges, would amount to non-disclosure of all relevant facts. The learned judges were of the view that the assessee had failed to disclose: (1) the basis of allocation of expenses; (2) correspondence between the London principal and the assessee company on the relevant subject; (3) existence of auditor's certificate fixing percentage that would be reasonable for allocation in respect of the subsidiary companies including the assessee. These were some of the important materials which the assessee failed to disclose.

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The learned judges referred to some of the authorities and observed that counsel for the assessee before the learned trial judge had never denied existence or possible existence of the auditor's certificate in London but had only pleaded for time and opportunity to the assessee but after sufficient time had been given and impugned notices were issued, reopening was challenged. It was held, therefore, that in this case there were *prima facie* materials to form the belief, according to the division bench, that there was failure and omission on the part of the assessee to disclose fully and truly all the relevant and material facts which led to the escapement of income or underassessment of income of the assessee company.

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The principles on this branch of law are well settled.

To confer jurisdiction under clause (a) of section 147 of the Act beyond the period of four years but within a period of eight years from the end of the relevant year under section 148 of the assessment year, two conditions were required to be fulfilled: first is that the Income-tax Officer must have reason to believe that the income profits or gains chargeable to tax had been underassessed or escaped assessment; the

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second was that he must have reason to believe that such escapement or under-assessment was occasioned by reason so far as relevant for the present purpose to disclose fully and truly all material facts necessary for the assessment of that year. Both these conditions are conditions precedent to be satisfied. See in this connection the observations of this Court in **Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta and Another**, 41 I.T.R. 191 at 199. The obligation, therefore, of the assessee primarily was to disclose fully and truly all material and relevant facts; that the obligation was only of disclosing the basic facts but not obligation to disclose what inference had to be drawn from such facts. It was further observed by Hidayatullah, J. as the learned judge then was, that the mere production of evidence before the Income-tax Officer was not enough and there might be an omission or failure to make a full and true disclosure, if some material for the assessment lay embedded in that evidence which the assessee could uncover but did not. If there was such a fact, it was the duty of the assessee according to the said learned judge to disclose it. There was difference of opinion amongst the learned judges in that case on certain aspect but for the purpose of this appeal, it is not necessary to refer to the same.

In the case of **S. Narayanappa and Others v. Commissioner of Income-tax, Bangalore**, 63 I.T.R. 219 this Court again reiterated the conditions required to be fulfilled to confer jurisdiction on the Income-tax Officer to issue the notice under section 34 of the 1922 Act which is in <u>pari-materia</u> with section 147 of the Act. It was reiterated that if there were in fact some reasonable grounds for the Income-tax Officer to believe that there had been any non-disclosure as regards any fact which could have a material bearing on the question of under-assessment or escapement, that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice for reopening. Whether those grounds were adequate or not was not a matter for the court to investigate. In other words, it was emphasised, that sufficiency of the grounds which induced the Income-tax Officer to act was not a justiciable issue. It was of course open for the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief could be challenged by the assessee but not the sufficiency of the reasons for the belief.

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The division bench of Calcutta High Court in **P.R. Mukharjee v. Commissioner of Income-tax, West Bengal,** 30 I.T.R. 535 had reiterated that the assessee could only be held guilty of failure to disclose fully and truly all material facts only when the assessee was aware of all the material facts.

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This Court had occasion in **Commissioner of Income-tax, West Bengal, and Another v. Hemchandra Kar and Others,** 77 I.T.R. 1 to examine this question. There the assessee, a Hindu undivided family consisting of six members, had been assessed for the assessment year 1946-47. Following the demonetisation of high denomination notes in January, 1946, the assessee encashed notes of the value of Rs. 19,000 and five members of the family encashed notes of the aggregate value of Rs. 1,10,000. The Income-tax Officer reopened the assessment of the assessee and of the five members and by his reassessment orders made on 31st January, 1955 included the sum of Rs. 19,000 in the reassessment of the family and the sum of Rs. 1,10,000 separately in the assessments of the five members in respect of the respective notes encashed by them. Two days later, i.e. on 2nd February, 1955, the Income-tax Officer issued a notice under section 34(1)(a) of the Income-tax Act, 1922, seeking to include the sum of Rs. 1,10,000 in the hands of the family. The Tribunal, being satisfied that the notes encashed by the five members belonged to the Hindu undivided family, had held that the notice issued was valid. On a reference the High Court held that the notice issued on 2nd February, 1955 was not valid, since it was found that when the first assessment was made the primary facts necessary for reassessment of the family were in the possession of the Income-tax Officer; that these facts came into his possession not by virtue of any disclosure made by the family but were discovered by him otherwise; that at the time of the first reopening of the assessment of the Hindu undivided family and of the individual members the question of assessment of the entire amount represented by the high denomination notes was under direct consideration; that it was open to the Income-tax Officer to assess the whole amount of Rs. 19,000 and Rs. 1,10,000 in the hands of the Hindu undivided family at that stage; and that the escapement, if any, therefore, took place by reason of the failure of the Income-tax Officer to assess the family with respect to the sum of Rs. 1,10,000 when he was

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in full possession of all the material facts. On appeal, this Court held affirming the decision of the High Court, that, the primary facts were within the knowledge of the Income-tax Officer, therefore it could not be said that there was non-disclosure of any primary facts.

B Reliance was placed, however, on certain observations of this Court in **Income-tax Officer, I-Ward, Hundi Circle, Calcutta, and Others v. Madnani Engineering Works Ltd.**, 118 I.T.R. 1 in aid of the submission that whether or not in a particular case, allocation of certain expenses was reasonable or excessive is not a basic fact but an inferential fact.

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The question was again viewed by this Court in **Ganga Saran & Sons P. Ltd. v. Income-tax Officer and others**, 130 I.T.R. 1 at 13 and the question was whether such remuneration claimed to have been paid to somebody was bogus and not genuine. This Court observed that it was difficult to D appreciate how any inference could reasonably drawn that the payment of remuneration to some person was sham and bogus merely from the manner in which that person expended the amount of remineration received by him, particularly when the persons to whom he gave the loan and made gifts were his close relatives.

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Our attention was drawn on behalf of the revenue to the observations of O. Chinnappa Reddy, J. as the learned judge then was, of the Punjab and Haryana High Court in the case of **Hazi Amir Mohd. Mir Ahmed v. Commissioner of Income-tax, Amritsar**, 110 I.T.R. 630 where the learned judge at page 634 F of the report observed referring to the **Calcutta Discount Co.'s** case that this Court drew a distinction between primary facts and inferential facts and held that the duty of the assessee extended only to disclosing primary facts fully and truly. The learned judge in **Hazi Amir Mohd. Mir Ahmed's** case observed that the assessee was not absolved to disclose the G obligation of the facts truly. So therefore it was an obligation to disclose truly all the necessary facts. This view was reiterated by this Court in **Income-tax Officer, I Ward, Distt. VI, Calcutta and Others v. Lakhmani Mewal Das**, 103 I.T.R. 437 where this Court observed that it was the duty of the assessee to disclose fully and truly all primary facts. H It must further be reiterated that before an action is taken

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under clause (a) of section 147, there must be reason to believe that there was failure or omission on the part of the assessee to disclose fully and truly all primary facts. See in this connection the observations of this Court in the case of **Sheo Nath Singh v. Appellate Assistant Commissioner of Income-tax (central), Calcutta, and others.**, 82 I.T.R. 147 at 153. But reason to believe is not the same thing as reason to suspect.

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As is well-settled now by the several authorities of this Court and of several High Courts, that there must be materials to come to the conclusion that there was 'omission or failure to disclose fully and truly all material facts necessary for the assessment of the year'. It postulates a duty on every assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, the obligation is to disclose facts; secondly those which are material; thirdly the disclosure must be full and fourthly true. What facts are material and necessary for assessment will differ from case to case. In every assessment proceedings, for computing or determining the proper tax due from the assessee, it is necessary to know all the facts which help the assessing authority in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as to certain other facts. But once the primary facts are there it was for the taxing authority to draw inferences. It is not necessary for the assessee to draw inferences for him. See in this connection the observations in **Calcutta Discount Co. Ltd.'s** case (supra).

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In this case it is necessary therefore to bear in mind that the assessee had all along disclosed and the revenue was aware that London management expenses were incurred on behalf of the assessee by the London Company who were managing the affairs and doing certain works for the assessee as well as certain allied companies belonging to Burmah Oil Corporation Group. The expenses for these allied concerns were on pro-rata basis charged by the London office and a certain proportion of the expenses were allocated to different companies and they debited certain portions, i.e. these amounts were realised from the assessee and allied companies in proportion to which

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the London company debited them those charges. This fact was known all along to the revenue while making the original assessment for the relevant assessment years. The audit report of the assessee company was supplied but it is not clear whether the audit report of the London company was supplied and was asked for. It is unlikely that when London company was debiting the assessee company and other companies in the audit repot every year, there would be any note that such debits by which the London company got certain money which were excessive i.e. the London company realised more than it had actually incurred of the expenses. In any event, however, the amount realised would be mentioned in the audit report as a basic fact. That has been disclosed, to the revenue at the time of the original assessment. The nature and the quantum of the work done had also been disclosed. Whether it was excessive or not was an inferential fact. It is true that the Income-tax Officer, from time to time as would be evident from the correspondence noted before, had some doubts as to whether the entirety of the expenses debited were really incurred for the assessee company by the London company or whether that was unreasonable or excessive having regard to the magnitude of the work done by the London company but that would be a matter of opinion and an inference drawn from the amount of the work in correlation to the amount debited. The facts what was done, what was being claimed by the London office and the difficulties in producing the accounts or the opinion of the auditors for which the Income-Tax Officers had called upon the assessee, were all known to Income-tax Officers at the time of making the original assessments. In spite of the same, the Income-tax Officer choose to assess the assessee in the manner he did. In the light of the opinion of the auditors for the assessment year 1963-64 wherein his opinion that ten per cent would be reasonable charge might be good information for which the assessment of the assessee could be reopened under clause (b) but on this basis alone it could not be said that the assessee had failed to disclose fully and truly all basic facts at the time of the original assessment of the relevant assessment years. There was no evidence or allegation that such an opinion was there available with the assessee company at the time of the original assessments. Even if such an opinion as opinion evidence be considered as a basic fact, a question on which we need not express any opinion now, there was no evidence that such opinion was with the assessee at the

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time or before the completion of the original assessments for the relevant assessment years.

Having regard to what is stated hereinbefore all the basic facts in this case were disclosed, it was however not disclosed as to what was the opinion of the auditor, as to what is reasonable allocation share of the assessee having regard to the amount of work done on behalf of the assessee company of the London office expenses. There is no conclusive evidence that at the relevant time i.e. at the time of filing of the return before the assessments, such auditor's opinion about the reasonableness was there. Secondly, what would be reasonable or not would be an inference of the auditor. The amounts spent, the nature of the work alleged to have been done by London office on behalf of the assessee and the basis of the allocation had been explained in reply to the queries made by the Income-tax Officer before the assessment. The Income-tax Officer had asked at one point of time for the auditor's opinion. It was stated that such opinion could not be supplied. In spite of the same, the Income-tax Officer did not choose to make a best judgment assessment and did not draw any adverse inference against the assessee. In that view of the matter, it cannot be held that there was failure to disclose fully and truly all basic facts. From the certificate for the year 1963-64 it appears that a very large amount of money was being diverted from the company in India to London - a very familiar pattern of colonial exploitation - but it raises only a suspicion that there might not had been full disclosure - belief, however, cannot be based on suspicion.

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In that view of the matter, in our opinion, the learned trial judge was right and the appellate court was in error in holding that there were materials from which it could reasonably be held that the assessee was guilty in not disclosing the basic facts.

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In the aforesaid view of the matter, we are unable to sustain the decision of the division bench of the High Court under appeal. In the premises these appeals are allowed and the order and the judgment of the division bench are set aside and the order and judgment of the learned single judge are restored. The assessee is entitled to the costs of these appeals.

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A.P.J. Appeals allowed.