

ANDHRA PRADESH HIGH COURT

Nawab Sir Mir Osman Ali Khan

Vs

Income-Tax Officer

(P J Reddy and Sambasiva Raok, JJ.)

07.03.1969

JUDGMENT

Sambasiva Rao, J.

1. Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. the Seventh Nizam of Hyderabad (hereinafter called the petitioner), was assessed to income-tax for the four assessment years 1955-56, 1956-57, 1957-58, and 1958-59. All the four assessments were completed by March 28, 1961. The Income-tax Officer, Circle No. 3, Hyderabad, who is the respondent, however, issued notices dated March 13, 1964 (received by the petitioner on February 16, 1964 (sic)) to the petitioner under Section 148 of the Income-tax Act, 1961, calling upon him to file supplemental returns of income, on the alleged ground that some income chargeable to tax in the four above-mentioned assessment years had escaped assessment. These proceedings are said to have been instituted by him under Section 147(a) of the Income-tax Act, 1961. These writ petitions were thereupon filed for the issue of writs of prohibition, prohibiting the respondent from taking any proceedings instituted by him under Section 147(a) of the Income-tax Act, 1961, by the issue of notice under Section 148 dated March 13, 1964.

2. The assessments for the assessment years 1955-56, 1956-57, 1957-58 and 1958-59 were completed on March 18, 1958, March 19, 1958, July 26 1958, and March 28, 1961, respectively. The Income-tax Act, 1961, came into force on April 1, 1962. The four assessments thus came to be made under the earlier Income-tax Act, 1922. When the respondent issued notices to the petitioner under Section 148 of the 1961 Act, the petitioner's authorised representatives, M/s. S. G. Daslagir & Co., Chartered Accountants, wrote to the respondent, by their letter dated March 17, 1964, requesting him to state the reasons for re-opening the assessments already completed. By his reply dated April 1, 1964, the respondent informed the chartered accountants that action was taken under Section 147(a) of the 1961 Act for the said four assessment years, and that reasons for re-opening the assessments would be intimated after the filing of the returns in response to the notices issued. Thereupon, the petitioner filed supplemental returns for the aforesaid assessment years under protest and by another letter dated April 15, 1964, once again requested the respondent to state the reasons for re-opening of the assessment. It was pointed out in that letter that action under Section 147(a) could not be initiated, unless it was possible for the respondent to state that owing to omission or failure on the part of the petitioner, some income had escaped assessment for the above-mentioned years. On June 4, 1964, the respondent sent a

communication to the petitioner's auditors, stating the reasons for re-opening the assessments. The substance of the said reasons is : the incomes of Mazharunnisa Begum, Laila Begum and Jani Begum, who are alleged to be the wives of the petitioner, and of seven minor children of Laila Begum and also of the minor son of the Jani Begum, arising out of the assets transferred directly by the petitioner, were not included in the petitioner's total income in the assessments of the aforesaid four assessment years, they were includible under Section 16(3) of the Income-tax Act, 1922. This omission to include the said incomes in the total income of the petitioner for the assessment years arose out of the failure or omission of the petitioner to disclose facts fully and truly concerning the status of the ladies as his legally wedded wives. The respondent stated that, for that reason, the provisions of Section 147(a) of the 1961 Act were applicable and notices were accordingly issued. The petitioner in these writ petitions disputes the validity of this stand taken by the respondent and denies the very jurisdiction of the respondent to proceed under Section 147(a) of the 1961 Act, as the conditions precedent to the exercise of the jurisdiction do not exist.

4. Before we proceed further, it would be pertinent to note that the three ladies, who are alleged to be the wives of the petitioner and their minor children submitted separate returns and they were assessed on their incomes and taxes levied on them were also paid.

5. Sri Anjaneyulu, appearing for the petitioner, contends : There is no dispute that the returns were filed for the years in question, as required by Section 22 of the Income-tax Act, 1922. Even now, there is no suggestion of any non-disclosure of any material fact, directly relating to the incomes disclosed in those returns. The question of the status of the three ladies and their children arose by reason of other provisions in the Act, viz., Section 16(3). The question, therefore, is whether those three ladies were the legally wedded wives of the petitioner and their children were his legitimate children. It is not as if that the respondent did not seek clarification in respect of the status of these persons, before the assessments: for these four years were completed. In fact, he sought information from the petitioner about the status of these persons. In reply to that query, Sri Taraporewala, the financial adviser and general power of attorney agent of the petitioner, filed a statement dated September 9, 1957, before the respondent. Therein it was stated that the essential requisites of a valid marriage under the Mohammadan law such as proposal, acceptance, witnesses, mehar, etc., did not exist in the case of the three, ladies in question. They were merely received into the palace of the petitioner as ladies of rank and position. They were referred to as wives only by way of courtesy in the several trust deeds executed by the petitioner. In fact, in some of the trust deeds, they were also referred to as "ladies of position". The trust deeds wherein the ladies were referred to as wives, were indeed before the respondent. Having considered the trust deeds and the statement made by the power of attorney agent, the Income-tax Officer accepted the explanation that the ladies were not legally wedded wives. It was only after such satisfaction, the assessments for the four years were completed by the respondent. The further reference to the ladies in question, as wives, in the subsequent trust deeds dated December 5, 1957, and March 21 1957, executed by the petitioner, does not alter the situation and create any new evidence. Nor do they disclose any new fact or falsify, any material fact that had already been disclosed. Thus, the very basis on which the respondent seeks to reopen the assessments under Section 147(a) is a pretext and is nothing but an attempt to clutch at jurisdiction, which did not exist in him. There was no omission or failure on the part of the petitioner to disclose fully and truly any material fact necessary for the assessments of the four years under consideration. It is, therefore, contended that the entire proceeding was vitiated by

want of jurisdiction.

6. As we have said, the assessments in question were completed before April 1, 1962, when the 1961 Income-tax Act came into force. The assessment proceedings were, therefore, made under the 1922 Act. Section 34 of that Act deals with "income escaping assessment". The relevant portions of that section are as follows :

"34. (1) If-

(a) The Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under Clause (a) at any time and in cases falling under Clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:.."

7. It will be seen that if the escapement arose by reason of any omission or failure on the part of an assessee, Clause (a) of Sub-section (1) applies. But, if income escaped assessment for reasons other than omission or failure on the part of the assessee, then Clause (b) applies. In cases coming under Clause (a), re-opening of the assessment can be made within eight years, while in cases coming under Clause (b) the period was restricted to four years only. Again, Clause (a) deals with two varieties of omissions or failures on the part of an assessee. The first one is to make a return of his income under Section 22 for any year. The second is to disclose fully and truly all material facts necessary for his assessment for that year. In the light of these provisions, the learned counsel for the petitioner advances a two-fold argument. At first, he argues that there was no omission or failure on the part of the petitioner to make a return of his income under Section 22 for the four assessment years. The returns filed were in perfect accord with the requirements of Section 22 and that section did not impose any legal obligation on the petitioner to include in his return, the incomes from assets transferred to his wives and children, even supposing for arguments' sake that the three ladies in question and their children were his legally wedded wives and legitimate children. Consequently, according to him, there was no question of any omission or failure on the part of the petitioner, within the meaning of the first part of Section 34(1)(a).

8. The second part of the arguments is that there was no omission or failure on the part of the

petitioner to disclose fully and truly all material facts necessary for his assessment for those four years, because all necessary disclosures, including the references to the three ladies and their children as wives and children of the petitioner in the trust deeds, were placed before and were available with the respondent along with an explanation tendered by his general power of attorney agent. The second part of Section 34(1)(a) is thus not attracted. The learned counsel, therefore, maintains that neither requirement of Clause (a) is satisfied in this case. Obviously, the assessments cannot be reopened under Clause (b) because the period of more than four years had elapsed from the end of the assessment years. Since action under Clause (b) was no more available to the respondent, he was only trying to clutch at the jurisdiction under Clause (a) by issuing the impugned notices.

10. We will now proceed to consider the merits of these contentions. The first category of omission or failure referred to in Clause (a) is in making a return of an assessee's income under Section 22. There is no dispute that the petitioner had filed full returns of his own total incomes. The question then is whether an assessee is required to disclose and include incomes other than his own, and which are includible in his assessment under the other provisions of the Act, including Section 16(3). Section 22 does not warrant any such requirement. Sub-section (1) of Section 22, which is the material portion, is in the following terms :

"The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:...."

11. What is required to be disclosed in the return is only the total income and the total world income of the assessee derived during the year under assessment. There is no requirement that he should disclose other people's income also, though a tax may be leviable on him in respect of those other incomes. It should be noted that Section 22 deals only with the assessee's own total income and total world income. At that stage, in so far as the return is required to be filed, it is not concerned with the actual computation and assessment of the assessee. Those are dealt with by other provisions of the Act. While so computing and determining the total income of an assessee, the Act, by its various other provisions provided for exemptions, inclusions and exclusions. Section 16 contains some of those provisions. Sub-section (3) of Section 16, which is relevant for the present discussion, states:

" 16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included-

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

(i) from the membership of the wife in a firm of which her husband is a partner;

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

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart: or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration ; and

(b) so much of the income of any person or association of persons as arises from assets

transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

12. It is the case of the revenue that the income of the three ladies and their children came under Sub-clauses (iii) and (iv) of Section 16(3)(a), on the supposition that they are his legally wedded wives and legitimate children. There is no dispute in this case that certain assets were transferred by the petitioner for the benefit of these ladies and their children, otherwise than for adequate consideration. If the three ladies are wives of the petitioner, the income derived by them from such transferred assets would certainly be includible, by virtue of Sub-clause (iii), and if their children are the legitimate children of the petitioner, their incomes from the assets transferred to them by the petitioner would be includible in the total income of the petitioner under Sub-clause (iv). But, the point is whether these details which are covered by Section 16 are required to be shown in the return that the petitioner had to file under Section 22. There is nothing in the Act which would warrant such a supposition. Section 16 cannot be read into Section 22. Section 59 of the Act empowers the Board of Revenue to make rules and to provide for any matter, which by the Act has to be prescribed. In exercise of these powers, the Central Board of Revenue prescribed the Rules. Rule 19 of those Rules provides that the return of the total income and total world income for individuals, Hindu undivided families, etc., required under Sub-sections (1) and (2) of Section 22, shall be in the prescribed form and shall be verified in the manner indicated therein. There is nothing either in these Rules or in the form prescribed, making it obligatory on the part of the assessee to include in the return of his total income, the income of his wife and minor children. The absence of any such requirement in the form is fairly conceded by the learned counsel for the revenue also. There is thus nothing either in the Act, Rules or in the form, which makes it obligatory upon the assessee to include in his return the deemed income which arose by reason of Section 16.

13. There is ample authority for this view. In *D. R. Dhanwate v. Commissioner of Income-tax*¹, the Bombay High Court held that:

" No statutory obligation is cast on an assessee in filing a return of his total income to include therein the income of his wife or minor child arising directly or indirectly from her or its membership in a firm of which he is also a partner."

14. The Division Bench went even a step further and held that:

" Even assuming that it is obligatory on the assessee in making a return for any year to include in his total income the income of his wife or minor child arising directly or indirectly from her or its membership in a firm of which he is also a partner, failure on his part to do so does not amount to 'failure to' disclose fully and truly all material facts necessary for his assessment for that year' within the meaning of Section 34(1)(a) of the Income-tax Act and does not enable the Income-tax Officer to issue a notice of reassessment under Section 34(1)(a)."

15. This decision of the Bombay High Court was referred to with approval by a Division Bench of this court (of which P. Jaganmohan Reddy C.J. was a member) in *Akula Venkata Subbaiah v. Commissioner of Income-tax.*, [1963] 47 I.T.R. 458, 464, Chandra Reddy C.J., speaking for the Bench, observed after referring to Section 16(3):

" Does this section cast any duty on the assessee to include the income of the minors

within his total income ? In examining the scope of that clause it is useful to remember the phraseology 'in computing'. The import of the section is that the concerned Income-tax Officer is authorised to take into account the income of the minors in determining the total income of the assessee. We are unable to find anything in the language of either Section 34 or of Section 16 which warrants the conclusion that it is incumbent on the assessee to include the income of the minor partners in his total income. Section 16 authorises and even casts a duty on the officer concerned to include all the artificial incomes in the total income of the assessee. If the return contains all the material facts, which would put the officer in a position to compute the total income, it is his duty to include the income contemplated by Section 16. There is no further obligation laid on the assessee."

16. The Madras High Court, however, took a different view in *VD. M. RM. M. RM. Muthiah Chettiar v. Commissioner of Income-tax*,². In that case the assessee had three minor sons and they were entitled to the benefit of a partnership, in which the assessee was a partner. He submitted his return without disclosing the fact that the minors were his sons or that they had been admitted to the partnership. Separate returns were filed by the minor sons through the assessee's wife, as their guardian. The learned judges held that :

" The relationship of the minors admitted to the benefits of the partnership in which the assessee was a partner was a primary fact, and as that primary fact was kept back from the knowledge of the assessing authority by the assessee, there was a failure to disclose material facts necessary for the assessment of the assessee, and proceedings for reassessment under Section 34 were maintainable."

17. Apart from the fact that this case before the Madras High Court is distinguishable on the facts from the instant case, the decision of the Madras High Court in this case was reversed by the Supreme Court in *V. D. M. KM. M. RM. Muthiah Chettiar v. Commissioner of Income-tax*,³. The question posed was :

" Whether, on the facts and in the circumstances of the case, the reassessment made on the assessee under Section 34 of the Act is valid in law for 1952-53 to 1954-55?"

18. Shah J., speaking for the court, after referring to the relevant provisions of the Income-tax Act, 1922, including the Rules framed under Section 59 and the forms of returns, answered the question thus :

"The act and the Rules accordingly imposed no obligation upon the assessee to disclose to the Income-tax Officer in his return, information relating to income of any other person by law taxable in his hands."

19. Then the learned judge referred to Section 16(3) and observed :

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

20. Finally it was held :

" Assuming that there were instructions printed in the forms of return in the relevant years in the absence of any head under which the income of the wife or minor child of a partner whose wife or a minor child was a partner in the same firm, could be shown, by not showing that income the taxpayer cannot be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment. Section 16(3) imposes an obligation upon the Income-tax Officer to compute the total income of any individual for the purpose of assessment by including the items of income set out in Clauses (a)(i) to (iv) and (b), but thereby no obligation is imposed upon the taxpayer to disclose the income liable to be included in his assessment under Section 16(3). For failing or omitting to disclose that income proceedings for reassessment cannot therefore be commenced under Section 34(1)(a). Section 22(5) required the assessee to furnish particulars of the names and shares of his partners, but imposed no obligation to mention or set out the income of the nature mentioned in Section 16(3)... Section 34(1)(a) sets out conditions in which the power may be exercised. It did not give rise to an obligation to disclose information which enabled the Income-tax Officer to exercise the power under Section 16(3)(a)(ii), nor had the use of the expression 'necessary for his assessment' in Section 34(1)(a) that effect."

21. In this view, the Supreme Court reversed the decision of the High Court in *VD. M. RM. M. RM. Muthiah Chettiar v. Commissioner of Income-tax*⁴. Thus, the law on the point has been settled beyond any doubt by the Supreme Court itself. There is, therefore, no duty cast on the assessee to disclose, in his return filed under Section 22, any particulars relating to the incomes that can be included in his total income under Section 16(3).

22. This takes us to the second contention raised by the learned counsel for the petitioner.

23. Sri Ananta Babu, appearing for the revenue, however, argues that simply because the petitioner was not obliged to show the income includible under Section 16(3), he is not absolved from the duty of disclosing fully and truly all material facts necessary for his assessment, when he was called upon to do so. After the returns were filed, the department called upon the petitioner and his agents to disclose the status of the three ladies and their children. But, neither the petitioner nor his agents disclosed the material facts fully or truly. Though in reply to the department's query it was asserted on behalf of the petitioner that the three ladies in question were not his legally wedded wives, the petitioner continued to refer to them as his wives in the subsequent trust deeds. The learned counsel, therefore, contends that the revenue was fully justified in coming to the opinion that the true nature of the petitioner's relationship with the three ladies and their children had not been disclosed and for that reason the income derived by those persons from the assets transferred to them by the petitioner had escaped from assessment in the four relevant years. The question is whether this contention is tenable. For the reasons we are going to give presently, we do not think that this contention has any substance. It is undoubted that the department has ample power under Section 23(2) and 23(3) to call upon an assessee, in the course of his assessment, to produce such other evidence as the Income-tax Officer may require on special points. If the assessee fails to furnish the information required, he will become liable for action under Section 34(1)(a). Sri Anantha Babu, the learned counsel for the revenue,

relies upon *Manikonda Venkata Narasimham v. Commissioner of Income-tax*⁵, *Anne Nagendram & Bommareddy Venkayya & Co. v. Commissioner of Income-tax*⁶, which are decisions of this court, and on *Calcutta Discount Co. Ltd. v. Income-tax Officer*, a decision of the Supreme court in this connection. It is clear that, if the necessary information is not disclosed when asked for, the assessee will become liable to his assessment being reopened under Section 34(1)(a). What is failure to disclose is, however, to be decided on the facts of each case. This power of the Income-tax Officer to call for fresh information is not denied by the learned counsel for the petitioner. In fact, it is in exercise of this power that the Income-tax Officer, who was dealing with the assessments of the petitioner, called upon the petitioner to clarify his relationship with the three ladies in question. The three following queries were put to the petitioner:

- "(a) The rites and ceremonies attendant on legal marriages according to Muslim Law and how they were observed in the case of each of the four ladies, viz., Dulhan Pasha Begum Saheba ; Mazharunnisa Begum Saheba ; Laila Begum Saheba and Jani Begum Saheba.
- (b) What legal status is accorded to the children of Mazharunnisa Begum Saheba, Laila Begum Saheba and Jani Begum Saheba, vis-a-vis, the children of the late Dulhan Pasha Begum Saheba ?
- (c) Any other factor from the point of view of religion which distinguished the status of late Dulhan Pasha Begum Saheba from the other three ladies. "

24. In reply to these queries, Sri C. B. Taraporewala, the financial adviser and general power of attorney agent of the petitioner, filed a statement before the Income-tax Officer, on September 9, 1957. It was stated therein that it was only with the late Dulhan Pasha Begum Saheba, the petitioner went through all the legal formalities of a marriage under Mohammedan law like a proposal, acceptance, witnesses and making provision for mehar. Without these formalities, it was stated, there was no valid marriage under Muslim law. The statement proceeded to state that, except in the case of Dulhan Pasha Begum Saheba, the formalities and requirements of a marriage were not gone through by the petitioner with any other lady, including the three ladies in question. According to the practice prevailing in the family of the petitioner, the ladies who had occupied high social position and who were received into his palace, were referred to as ladies of position. In view of the special favours bestowed upon them, the petitioner also referred to them, in his trust deeds, as wives, though in the legal sense, such a terminology was incorrect. Consequently, the children of these three ladies were not the legitimate children of the petitioner and did not enjoy any legal status as his legitimate children. This statement of the agent made the position clear, that there was no valid marriage between the petitioner and these three ladies--and it was only by courtesy, having regard to their background and special favours, they were called ladies of position and also referred to as "wives". The trust deeds do not disclose the facts any differently. As stated by the agent, the three ladies were referred to as " wives " by the petitioner in the family trust executed on May 10, 1950, and in the miscellaneous trust executed on August 6, 1950. It is very significant to note that in family pocket money trust executed on December 29, 1950, Mazharunnisa Begum was again referred to as "wife" while Laila Begum and Jani Begum were referred to as * ladies of position" adding in the brackets the word "wife". These three trusts deeds were available with the department when the relevant assessments were made. Sri Taraporewala referred, in his statement, to these trust deeds also. It is thus clear that even by the time the assessments were made, sufficient material was placed before the Income-tax Officer which shows that these three ladies were also referred to as " wives" of the petitioner. Why they were referred to as " wives " also was clearly and cogently explained by the petitioner's agent in

his statement dated September 9, 1957. This explanation obviously satisfied the Income-tax Officer and removed the doubts in his mind, arising out of reference to these three ladies as "wives" in the trust deeds that had already been executed by the petitioner.

25. Reliance is now sought to be placed on the Fernhil Trust and Race View Trust executed by the petitioner on March 21, 1957, and December 5, 1957, respectively, wherein the ladies were referred to as "wives" and their children as the children of the petitioner. But, it should not be forgotten that the references to them in the earlier trust deeds were only continued in these two trust deeds also. A reading of the earlier trust deeds also shows not only that these three ladies were referred to as "wives" in some of them but also that their children were acknowledged as the children of the petitioner. There is nothing in the later trust deeds, which is in any way different from the earlier trust deeds, in so far as reference to the three ladies and their children are concerned. The petitioner's attitude and approach to them continued to be the same. The latter two trust deeds, on which strong reliance is placed by the department, does not disclose any new facts or circumstances, different from those that were available from the original trust deeds, which the department examined before it made the relevant assessments. Simply because the two trust deeds of March 21, 1957, and December 5, 1957, were not placed before the Income-tax Officer when he made the original assessments, it cannot be said that material facts necessary for the assessment were not fully and truly disclosed. The department called for information and the necessary clarification was furnished by the agent on behalf of the petitioner. It is said that the trust deed of December 5, 1957, was executed after the statement of the power of attorney agent was recorded and, therefore, it brings about new disclosures. As we have already said, there is nothing in that trust deed which creates a new situation or discloses a new relationship between the petitioner and the three ladies and their children in question. As the learned counsel for the petitioner pertinently points out, perhaps the petitioner and his advisers ventured to continue the same descriptions and references to the three ladies and their children in the latter trust deeds also, because of the fact that the department had been satisfied with the clarification given by the power of attorney agent earlier. We cannot, therefore, accept the argument that these two trust deeds have created any new situation.

26. Nor can we agree with the learned counsel for the revenue that the firman issued by the petitioner on June 7, 1959, on the occasion of the demise of Jani Begum, altered the situation in any way. It is significant to note that Jani Begum was referred to in this press note as the daughter of the late Sahebzada Yavar Jung and not as the wife of the petitioner. In paragraph (2), she was referred to as a lady of position. The petitioner does not deny that Jani Begum was connected with him. Nor does the petitioner deny that Sahebzada Imdad Jah, the son of Jani Begum, was the son of the petitioner through her. But, that does not advance the arguments of the department. The question is whether the lady was his legally wedded wife and her son his legitimate son. This press note does not show anything of this nature. On the other hand, it is against the contention of the department, inasmuch as it refers to Jani Begum only as a "lady of position".

27. Lastly, great reliance is placed upon the statement of the petitioner himself, which was given on February 13, 1964, just on the eve of the re-opening of the assessments. In the sworn statement, the petitioner on-oath stated, that his only marriage conforming to all the religious and legal requirements of the Islamic law, was with Dulhan Pasha Begum and the other ladies were only admitted into his palace from time to time. According to the customary practice prevailing in his family, he conferred positions on ladies thus admitted into the palace, solely depending

upon the-social status they enjoyed. Those who had respectable family background were conferred the status of "ladies of position" and the other mistresses in the zenana were commonly referred to as khawasas. The three ladies in question, along with three other ladies, were conferred the special status as "ladies of position". Though Dulhan Pasha Begum was his only legitimate wife and that status was not enjoyed by any other lady in the palace according to usual practice, he referred to the ladies of position as his "wives". But such refence was only as a matter of courtesy and to bestow special favours on the ladies concerned, and not because they were considered to be his wives in the legitimate sense. Far from giving any support to the department's opinions and suspicions in this regard, this solemn statement made by the petitioner completely belies all such suspicions. There is no reason why this sworn statement of the petitioner cannot be accepted. It should not be forgotten that it has a great bearing on the-social and legal status of several members of his personal establishment. This statement has obviously far reaching repercussions on the legal rights of these three and other ladies and their children vis-a-vis the huge estates possessed by the petitioner. It is unthinkable that the three ladies and their children would have kept quiet and filed returns, separately, accepting the position* that they had no legitimate connections with the petitioner, had this statement of the petitioner not been correct. This statement of the petitioner fully, upholds the earlier clarification given by his agent on September 9, 1957, which was before the Income-tax Officer when the assessments in question were made.

28. There is no other material on which the department relies in coming to the opinion that the petitioner had failed to disclose fully and truly all material facts necessary for the reassessment. The reasons assigned by the respondent in reopening the assessments singularly fail to come within the scope of omission or failure on the part of the petitioner to disclose fully and truly all material facts necessary for the assessments. On the other hand, as we have shown above, all the material facts were before the department, when it made the assessments in question and nothing has been discovered which throws a different light on the matters already disclosed. There is no doubt that, having failed to act under Clause (b) of Section 34(1) within four years, the department is only trying to clutch at the jurisdiction under Section 34(1)(a) by making these allegations. We are satisfied that there is absolutely no substance or force in any one of them and that the respondent had no valid season to believe that the petitioner had omitted or failed to fully and truly disclose all material facts, necessary for his assessments for the four years. It follows that he has no jurisdiction to make reassessments for these four years. The claim of the petitioner in these writ petitions must be upheld.

29. In the result, the respondent is prohibited from taking any proceedings instituted by him under Section 147(a) of the Income-tax Act, 1961, by the issue of notices under Section 148 dated March 13, 1964, calling upon the petitioner to file return of the income for the assessment years 1955-56, 1956-57, 1957-58 and 1958-59. The petitioner will have his costs from the respondent, Advocate's fee Rs. 250.

1[1961] 42 I.T.R. 253

2[1965] 55 I.T.R. 147

3(C. As. Nos 1457-1459 of 1968 dated February 14, 1969)

4[1965] 55 I.T.R. 147

5[1960] 39 I.T.R. 575

6[1967] 66 I.T.R. 40