Supreme Court of India Commissioner Of Income-Tax vs M/S. Sun Engineering Works (P.) ... on 17 September, 1992 Equivalent citations: 1992 Supp 1 SCR 732 a Author: A Anand Bench: Y Dayal, . A Anand ORDER A.S. Anand, J. 1. The following question was formulated by the H High Court of Calcutta while granting the certificate of fitness to file these appeals against the judgment of the Division Bench of that court dated 17th November, 1976: Where an item unconnected with the escapement of income has been concluded finally against the assessee how for in reassessment on an escaped item of income it is open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income? The circumstances leading to the formulation of the aforesaid question and the grant of certificate of fitness to file the appeals are as follows. 2. Respondent in both the appeals is the assessee. For the assessment year 1960-61, the assessee filed the return of income on 17th of November, 1960, showing a loss of Rs. 36,418. For the assessment year 1961-62, the return of income was filed on 4th October 1961, declaring a loss of Rs. 24,314. The Income Tax Officer after discussion with the authorised representative of the assessee, Shri A.S. Chowdhary, considered both the returns on 12.12.1962 and in respect of the return for the assessment year 1960-61 recorded on the order sheet that the return filed beyond time. No action is necessary filed "N.D." For the assessment year 1961-62, the ITO recorded "the loss return is beyond time. Filed as N.D." The Income Tax Officer conveyed to the appellant vide communication dated 12.12.1962. Sub : Assessment years 1960-61 & 1961-62 With reference to above and your Authorised Representative's discussion with me I an to inform you that the loss return submitted beyond time for the assessment years under reference being invalid, no action on them is necessary. Hence, the proceedings for both these years are filed. The assessee challenged the order of the Income Tax Officer before the Appellate Assistant Commissioner. The Appellate Authority held that the Income Tax Officer was wrong in filing the returns without proper scrutiny and without first computing the loss in accordance with law the Appellate Assistant Commissioner also opined that it could only be known after proper computation, whether assessment would result in a loss or not. However, the appellate authority finally held that since the Income Tax Officer had 'filed' the returns no relief could be granted to the assessee in the appeals and dismissed both the appeals. The assessee did not prefer any further appeal from the order of the Appellate Assistant Commissioner and, thus, the orders of the Income Tax Officer relating to the assessment years 1960-61 and 1961-62 in respect of the "loss returns" became final. 3. It transpires from the record that subsequent to the proceedings as noticed above, the assessee filed a disclosure petition in respect of some Hundi loans and a settlement was arrived at between the assessee and the Revenue as a result whereof, the assessee became assessable for the disclosed sum of Rs. 27,000 for the assessment year 1960-61 and for the sum of Rs. 9,000 for the assessment year 1961-62. The Income Tax Officer considered the aforesaid amounts for the two assessment years as "escaped income". A notice as required by Section 148 of the Income Tax Act, 1961 (hereinafter the Act) was issued within the statutory period calling upon the assessee to show cause why the "escaped income"

of Rs. 27,000 and Rs. 9,000 respectively for the two assessment years be not brought to tax under Section 147(a) of the Act. After hearing the parties and considering the objections, an order under Section 147(a) of the Act was made and the "escaped income" was brought to tax. Aggrieved by the order of the Income Tax Officer made under Section 147(a) of the Act, the assessee went up in appeal and the Appellate Assistant Commissioner accepted the plea of the assessee that the Income Tax Officer should have redetermined the loss as declared in the original returns and set it off against the "escaped income" from other sources and even carry forward the loss, if necessary to the subsequent assessment years. Accordingly, the Appellant Assistant Commissioner allowed the appeal and directed the Income Tax Officer that in the reassessment proceedings not only the redetermine the loss as per the original loss returns and set it off against the escaped income from other sources but also that the unabsorbed loss, if any, should be carried forward and set off against the income in the subsequent years. 4. Aggrieved by this order, the Revenue went up in appeal before the Income Tax Appellate Tribunal. The Tribunal accepted the plea of the Revenue that the action of the Income Tax Officer in filing the assessment proceedings for 1960-61 and 1961-62 on the grounds indicated by him in the letter dated 12.12.1962, referred to (supra) amounted to nil assessment and that the Income Tax Officer had not allowed the losses as claimed by the assessee in the returns which had been filed beyond time. The Tribunal opined that since the decision of the Income Tax Officer dated 12.12.1962, had been upheld in appeal by the Appellate Assistant Commissioner and the assessee had not taken up the matter in any further appeal or revision, the order of the Income Tax Officer dated 12.12.1962, had been acquired finality. The Tribunal found that the Appellate Assistant Commissioner had fallen in error to hold that the determination of the losses claimed originally were still open for review in proceedings under Section 147(a) and direct the computation of losses and set off against the "escaped income". The High Court of Calcutta at the instance of the assessee in a reference under Section 256(2) of the Act called for the statement of the case and reference of the following question for opinion of the High Court: Whether on the facts and in the circumstances of the case the Tribunal was justified in disallowing the assessee's losses of Rs. 36,418 (Rupees thirty six thousand and four hundred and eighteen) only for assessment year 1960-61 and Rs. 24,314 (Rupees twenty four thousand and three hundred and fourteen) only for assessment year 1961-62 as per the returns of losses filed before the Income Tax Officer and initially filed by the Income Tax Officer while the Income Tax Officer added hundi loans as per settlement in reassessment proceedings? 5. The Bench after considering the arguments raised before it and after noticing the provisions of the Act, various judgments of some High Courts and this Court came to a conclusion that in the proceedings under Section 34 (sic 147) relating to the income which had "escaped assessment", viz., Rs. 27,000 and Rs. 9,000 the original "loss returns" in the original assessment proceedings could not be wholly ignored and in order to determine what income had "escaped taxation", the Income Tax Officer could not ignore losses which the assessee had suffered in the relevant years in question as reflected in the 'loss

returns' and the same were required to be computed for the purpose of determining the 'income which had escaped assessment'. The High Court, however, went on to say: We however, make it clear that if any portion of such loss is unabsorbed there will be no carry forward thereof to any subsequent year. To the extent as stated above we answer the question referred in the negative and in favour of the assessee. The Revenue, thereupon, filed an application under Section 261 of the Act for leave to appeal to the Supreme Court against the judgment of the Division Bench of the High Court. The case of the Revenue before the High Court was that since the loss claimed by the assessee originally was concluded finally against the assessee the question was not open for review in the reassessment proceedings and the Income-tax Officer in proceedings under Section 147 of the Act could not consider items which had become final in the original assessment proceedings unconnected with any escapement of income. On behalf of the assessee, however, it was contended that once reassessment proceedings are initiated, the initial order of assessment does not survive for any purpose whatsoever and while making a fresh order of assessment in the reassessment proceedings, the Income-tax Officer has the power to give benefit to the assessee, which might have been available to it in the original assessment proceedings. In support of these submissions the assessee had relied upon the judgments in Deputy Commissioner of Commercial Taxes v. H.R. Sri Rumulu 39 STC 177 and V. Jaganmohan Rao and Ors. v. Commissioner of Income-Tax and Excess Profits Tax 75 ITR 373. The Division Bench after hearing the arguments in the leave to appeal petition opined: In the instant case, it appears that the question which is involved, is not the power and the jurisdiction of the Income Tax Officer but the right of the assessee to agitate a matter concluded in the earlier assessment which is unconnected with any escaped item of income for the limited purpose of computation in the reassessment. This question was not involved in any of the decisions of Supreme Court referred to herein before. This in our view is a substantial question and fit for appeal to the Supreme Court. and formulated the question noticed in the earlier part of this judgment while granting the certificate of fitness. 6. Before us, Mr. Ranbir Chander has appeared for the Revenue and despite service, there has been no appearance on behalf of the assessee who remained un-represented in these appeals. With a view to answer the question as formulated by the High Court and to dispose of both the appeals, it is necessary to first consider the status and character of the original assessment orders dated 12.12.1962 made by the ITO in respect of the 'loss returns' for the years 1960-61 and 1961-62. As already notice, the orders were made after hearing the authorised representative of the assessee and since the returns had been filed beyond time, the assessment proceedings terminated in "no demand". As apparently there was no taxable income the losses were not directed to be set off or carried forward by the ITO. Even if, it be assumed for the sake of argument, that the procedure adopted by the ITO in dealing with the "loss returns" was not proper, the order of the ITO was not set-aside in appeal by the Appellate Assistant Commissioner and no further steps were taken by the assessee to question the order of the Income Tax Officer. Those, orders had, in fact and in law, become final and the assessee has to thank himself for that

situation. 7. In Anglo-French Textile Co. Ltd. v. Commissioner of Income-tax , a Brench of four learned Judges of this Court considered the scope of the provision of 'set-off and 'carry forward of losses' under the Income Tax Act, 1922 and the conditions and circumstances under which the same could be granted. The question before this Court was: Whether on the facts and in the circumstances of the case when an assessment has been made under Section 23(1) of the Indian Income-tax Act, determining the assessee company's income as 'nil' and when proceedings under Section 34 were subsequently started to assess the income which the Income-'tax Officer believed to have escaped assessment the assessee company is entitled to claim that the loss of profits and gains (including depreciation allowance) sustained by it in the previous year should be determined in the course of such proceedings. The Bench noticed that the assessee had in response to the notice calling for a return submitted a 'nil' return, which was accepted by the assessing authority. Subsequently, the Income-tax Officer sent the assessee a notice under Section 34(1)(b) of the 1922 Act in the following terms: Whereas in consequence of definite information which has come into my possession I have discovered that your income assessable to income-tax for the year ending 31st March, 1942; has (a) escaped assessment, I therefore propose to assess the said income that has (a) escaped assessment. I hereby require you to deliver to me not later than,... a return in the attached form of your total income and total world income assessable for the said year.... In reply the assessee again submitted a 'nil' return and also filed a statement showing 'loss'. The Income-tax Officer made the following order: As the net result for the world business is only a loss, there can be no question of profits attributable to operations in British India under Sections 42(1) and 42(2)(3) in respect of cotton purchases. The 'nil' return filed is therefore accepted. Hence there is no assessment for 1941-42. As this is a non-resident company, the loss need not be carried forward under Section 24(2) as that section in terms does not apply to non-residents. The assessee was particularly aggrieved by the last portion of the order and it claimed that the Income-tax Officer was bound to carry forward the loss as it had accepted the return. The assessee having failed throughout came to this Court in appeal. Vivian Bose, J. speaking for the Bench opined: ... There is no provision in the Act which entitles the assessee to have a loss recorded or computed, unless something is to be done with the loss. Thus, under Section 24(1) a loss can be set off against an income profit or gain and under Sub-section (2) the Balance of a loss can be carried forward to a following year on the conditions set out there. Except for this there is nothing else that can be called in aid. But under Sub-section (2) the loss can be carried forward when "the loss cannot be wholly set off under Sub-section (1)" and in that event only the "portion not so set off can be carried forward. We are therefore thrown back on Sub-section (1). Sub-section (1) provides that where an assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6 he shall be entitled to have the amount of the loss"set off against his income, profits or gains under any other head in that year. Therefore, before any question of set-off can arise there must be (1) a loss under one or more of the heads mentioned in Section 6, and (2) an income, profit or gain under some other head.

It follows that when there is no income under any head at all, there is nothing against which the loss can be set off in that year and unless that can be done Sub-section (2) does not come into play. Next, a set-off under Section 24(1) can only be claimed when the loss arises under the head and the profit against which it is sought to be set off arises under a different head. When the two arise under the same head, of course the loss can be deducted but that is done under Section 10 and not under Section 24(1). See the decision of the Privy Council in Rm. Aru. Ar. Rm. Arunachalam Chettiar v. Commissioner of income-tax, Madras. In the present case, the loss is computed by striking a balance in the profit and loss account of just the one business and consequently no question of different heads arises. On both these grounds, therefore, the assessee's contention must fail because, unless the loss can be set-off under Sub-section (1) of Section 24, it cannot be carried forward under Sub-section (2) and if it cannot be carried forward the question of its determination and computation becomes irrelevant. (emphasis Supplied) 8. Dealing with the reasoning of the High Court, the learned judge observe: The High Court proceeds on the ground that when proceedings are taken under Section 34 the assessee is not entitled to reopen the whole proceedings as the further proceedings are limited to assessing that portion of the income which has escaped assessment. We need not express any opinion on this. The question we have to answer is confined to the facts and circumstances of this case and those circumstances are (1) that no return was filed at any stage of the case disclosing any income, profits or gains at all, (2) that proceedings were later taken under Section 34, and (3) in the course of these proceedings the assesee claimed that a certain Joss should be determined and recorded. Our answer is that that cannot be done for the reasons we have given and that consequently the question referred was rightly answered in the negative by the High Court. 9. In Esthuri Aswathiah v. Income-tax Officer , a Division Bench of this Court opined that the order of the assessing authority at the conclusion of assessment proceedings to the effect "no proceedings" meant that the Income-tax Officer assessed the income as "nil" "and if thereafter, he had reason to believe that the appellant had failed to disclose fully and truly all material facts necessary for assessment for the year, it was open to him to issue notice for reassessment under Section 34" Shah, J. speaking for the Bench of three learned judges specifically rejected the plea raised on behalf of the assessee to the effect that the order of the ITO recording "no proceedings" implied that the original assessment proceedings had not been concluded or disposed of. To quote the learned judge: The submission that the previous return submitted on September 8, 1962, "had not been disposed of and until the assessment pursuant to that return was made, no notice under Section 34(1) for reassessment could be issued, has in our judgment no substance. The Income-tax Officer had disposed of the assessment proceeding accepting the submission made by the appellants that they had no income for the assessment year 1950- 51 10. In view of the settled position of law, as noticed above, the Tribunal was right to opine that, in the present case, by the order, dated 12.12.1962, the assessment proceedings had concluded and with the dismissal of the appeals against that order, the order of the ITO, dated 12.12.1962, had acquired finality. The High

Court clearly fell in error in holding that in the assessment proceedings there had been no final determination of losses for the relevant year and to assume as if the 'loss return' had not been finally disposed of or to be still open. The Income Tax Officer had disposed of the assessment proceedings, accepting the plea of the assessee that for the relevant year it had no income and that is why the proceedings were filed as 'No demand'. The order of assessment had, thus, become final on the conclusion of the proceedings and dismissal of the appeal. 11. Could the assessee in the above fact situation be permitted to claim"set off, not granted in the original assessment proceedings, by raising that plea once again in the reassessment proceedings initiated under Section 147 of the Act? 12. To answer this question, it is necessary to first extract the provisions of Sections 147 and 148 of the Act (as they existed at the relevant time) Section 147 read thus: Section 147 Income escaping assessment. 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 under Section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or (b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year). Explanation 1. - For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely: (a) Where income chargeable to tax has been underassessed; or (b) where such income has been assessed at too low a rate; or (c) where such income has been made the subject of excessive relief under this Act or under the Indian Income-tax Act, 1922 (XI of 1922); or (d) where excessive loss or depreciation allowance has been computed. Explanation 2. - Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section. Section 148. Issue of notice where income has escaped assessment.- (1) Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139. (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so. 13. Section 147, which

is subject to Section 148, divides cases of income escaping assessment into two clauses i.e. viz. (a) those due to the non-submission of return of income or non-disclosure of true and full facts and (b) other instances. Explanation (1) defines as to what constitutes escape of assessment. In order to invoke jurisdiction under Section 147(a) of the Act, the ITO must have reason to believe that some income chargeable to tax of an assessee has escaped assessment by reason of the omission or failure on the part of the assessee either to make a return under Section 139 for the relevant assessment year or to disclose fully and truly material facts necessary for the assessment for that year. Both the conditions must exist before an ITO can proceed to exercise jurisdiction under Section 147(a) of the Act. Under Section 147(b) the Income-tax Officer also has the jurisdiction to initiate the proceedings for reassessment where he has reason to believe, on the basis of information in his possession, that income chargeable to tax has been either under-assessed or has been assessed at too low a rate or has been made the subject of excessive relief under the Act or excessive loss or depreciation allowance has been computed. In either case whether the Income-tax Officer invokes his jurisdiction under Clause (a) or Clause (b) or both, the proceedings for bringing to tax an 'escaped assessment' can only commence by issuance of a notice under Section 148 of the Act within the time prescribed under the Act. Thus, under Section 147, the assessing officer has been vested with the power to "assess or reassess" the escaped income of an assessee. The use of the expression "assess or reassess such income or recompute the loss or depreciation allowance" in Section 147 after the conditions for reassessment are satisfied, is only relatable to the preceding expression in Clauses (a) and (b) viz., "escaped assessment". The term "escaped assessment" includes both "non-assessment" as well as "under assessment". Income is said to have "escaped assessment" within the meaning of this section when it has not been charged in the hands of an assessee in the relevant year of assessment. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of Section 147 because the assessment had not been made in the regular manner under the Act. The expression "reassess" refers to a situation where an assessment has already been made but the Income-tax Officer has, on the basis of information in his possession, reason to believe that there has been under assessment on account of the existence of any of the grounds contemplated by the provisions of Section 147(b) read with the Explanation (I) thereto. 14. There is some divergence of opinion in the High Courts in the country about the scope of power and jurisdiction of the Income-tax Officer under Section 147 of the Act and the rights of an assessee in those proceedings. 15. In Madhavjee Damodar Thackersay and Anr. v. CIT (Bom.) while answering the following question referred to the Bench: (1) Whether in the circumstances of the case, the Income-Tax Officer was correct in reassessing only such sources of income as he found had actually escaped assessment at the time of the original assessment for the financial year 1931-32 (was levied on 31st July, 1931)(sic). Beaumont, CJ. repelled the plea raised on behalf of the assessee that in the reassessment proceedings an assessee could obtain redress in respect of an erroneous assessment made at the time of original order of assess-

ment also and get credit in respect thereof during the reassessment proceedings. The learned Chief Justice opined: that under Section 34 of the Act it is income which has escaped assessment which can be subsequently charged and that it is not open to an assessee, when ,charged in that way to re-open the whole assessment and seek to be allowed credit in respect of some item which has been over-assessed, but on the other hand it is open for an assessee to show that income alleged to have escaped assessment has in truth and in fact not escaped assessment but has been brought in under some inappropriate head.... 16. The Rajasthan High Court in Hiralal v. CIT (Rajasthan) , was requested to answer the following question in a reference under Section 256(1) of the Income Tax Act 1961: Whether, on the facts and circumstances of this case, the Tribunal was right in holding that the Income-tax Officer's jurisdiction under Section 147 of the Income-tax Act, 1961, was confined to the assessment of such income as had escaped assessment and did not extend to revising or re-opening the whole original assessment? The question was answered in the affirmative and it was held that the jurisdiction of the ITO under Section 147 of the Act was confined to the assessment of such income as had escaped assessment and did not extend to revising or re-opening the whole assessment. The Bench followed the judgment in Kevaldas Ranchhodas v. Commissioner of Income Tax of the Bombay High Court wherein it had been held that in the re-assessment proceedings initiated under Section 34(1)(a) of the 1922 Act, on the ground that loss had been over-estimated in the original assessment, the ITO had no jurisdiction to reopen the entire assessment originally made, and determine afresh the assessable profits or to correct errors and omissions made by the assessee in the matter of computation of total income. The power conferred upon the ITO in respect of loss, it was held, was confined to "re-compute the loss" and it was observed that when the legislature speaks of re-computing the loss, it means only the loss and not the income, profits or gains. It was further held that Section 34(1)(a) does not empower a general recomputation of the income, profits or gains and that the recomputation can take place only with a view to garnering in the income escaping assessment under the first clause. 17. The Allahabad High Court in Sir Shadi Lal and Sons, Shamli v. CIT , held that on reassessment, the entire assessment is not opened and therefore a claim for expenditure which had been disallowed during the original assessment proceedings cannot be reagitated on the assessment being reopened for bringing to tax income which had 'escaped assessment'. The court held that the controversy in reassessment is confined to matters which are relevant in respect of the income which had not been brought to tax during the course of the original assessment. 18. In Sharda Trading Co. v. CIT (Delhi) , though the question before the Delhi High Court arose in a somewhat different situation, it was observed that Section 147 empowered the ITO only to assess income which had escaped assessment in the relevant year and that reassessment is not confined to those items in respect of which there is initiation of proceedings and once an assessment is reopened, the ITO is duty bound to determine the tax liability of an assessee and for the said purpose he would necessarily have to take into account not only the escaped income in respect of which a notice under Section 148 read with Section 147

had been issued but also the entire income that had escaped assessment during that year. 19. The Kerala High Court in Commissioner of Wealth-tea v. C. Ravindran and Ors. after following the judgment of the Division Bench of the Bombay High Court in [supra] and of the Allahabad High Court in (1973) 92 ITA 453 [supra] held in a case arising under the Wealth Tax Act that during the reassessment proceedings initiated by the Wealth Tax Officer to reassess the escaped net wealth under Section 17[1] of the Wealth Tax Act 1957, an assessee could not during the reassessment proceedings to tax the escaped net wealth be allowed to seek recomputation of net wealth and redoing of the assessment and be allowed a claim which the assessee had failed to make at the time to the regular assessment, especially when that assessment of the assessee had become final. The Bench opined "that there was no material difference in this respect between the provisions of the Income Tax Act and the Wealth Tax Act. 20. In Commissioner of Wealth-tax v. Ballarpur Industries Ltd. (1979) 118 ITA 711 again in a case arising under the Wealth Tax Act Kantawala CJ. speaking for the Bench of the Bombay High Court opined that the nature of the jurisdiction to assess under Section 17 of the Wealth Tax Act 1957 is limited and that there is nothing in the scheme of the Wealth Tax Act to enlarge the limited scope of the power and jurisdiction of the Wealth Tax Officer in assessing to tax the escaped net wealth. by allowing the assessee to seek a recomputation of net wealth and redoing of the assessment and allow a claim which the assessee failed to make at the time of the regular assessment, especially when the assessment of the assessee had become final.... 21. A Division Bench of the Madras High Court in CIT v. Standard Motor Products of India Ltd. also considered the scope of"reassessment" under Section 147(a) of the Act. The Bench opined that once the assessment is reopened the ITO will not only have the jurisdiction but it would be his duty to determine the tax liability of an assessee and for that purpose he will necessarily have to take into account not only the escaped income in respect of which a notice under Section 147 had been issued but also the entire income that had escaped assessment during the year. The Bench went on to hold that the ITO had the power and jurisdiction to bring to charge items falling under Section 147(b) in a given case where reassessment proceedings have been validly started by issuance of a notice under Section 147(a) of the Act. It was held that once an assessment is reopened, the previous assessment is set aside and the whole assessment proceedings start afresh. The initial order of 'assessment stands automatically" cancelled. 22. The same High Court in Chettinad Corporation Pvt. Ltd. v. CIT (Mad) however, observed: Having regard to the object and language of Section 34 of the I.T. Act, 1922, Section 147 of the I.T. Act, 1961, and Section 8 of the Surtax Act, 1964, the reopening of an assessment can only be for the benefit of the Revenue subject to one exception, viz., that where a particular item is ought to be brought to charge for the first time in the reassessment proceedings, any allowance, deduction or other relief in relation to that item can be put forward by the assessee and will have to be considered by the assessing authority for grant of relief or otherwise. However, if any disallowance made in the course of the original assessment which the assessee wants to be reconsidered during the

assessment is relevant or has any nexus with items of income that are brought to charge in the reassessment, they can also be considered. But other items of disallowance or relief claimed by the assessee which are not relevant to items which are the subject-matter of the enquiry in the reassessment proceedings cannot be considered again by the ITO at the stage of reassessment. (Emphasis supplied) 23. In Deputy Commissioner v. Indian Refrigeration Industries P. Ltd. [1980] 46 STC 246 the Madras High Court in a sales tax case opined that when the assessing officer proceeds to make a reassessment, he does so for the purpose of predetermining the annual taxable turnover as a whole and the reassessment order reflects the assessable turnover in its entirety and the original order of assessment is virtually set aside. By reassessing the assessee, the taxing officer is bound to determine the taxable turnover for the assessment year to question as a whole and the assessing authority cannot be said to be merely assessing the assessee on the escaped turnover but it assesses him on his total turnover. This judgment, however, was dissented from by a subsequent Division Bench of that High Court in Joint Commercial Tax Officer-II, Tuticorin v. Ekambareeswarar Coffee and Tea Works (1991) 83 STC 457. 24. The Calcutta High Court in CIT (Central) v. Assam Oil Co. Ltd. following its earlier judgment in CIT v. Ram Sevak Paul dealt with the scope of Clause (b) of Section 147 and opined that once an assessment is reopened in such a case, the ITO has not only the jurisdiction but a duty to levy tax on the entire income that had escaped assessment. The Bench then held: It appears to us that in view of the scheme of the I.T. Act, once a reopening is made, the entire assessment is set aside and the income which has escaped assessment, even though there is nothing to show the escapement of assessment, it should be examined and even in a case where the assessee is entitled to any deduction which was not granted in the original assessment, the assessee would be so granted the deduction.... [emphasis supplied] 25. The Andhra Pradesh High Court in State Bank of Hyderabad v. CIT , observed: Once an assessment is reopened under Section 148 of the Income-tax Act, the entire assessment proceedings are at large. It is open to the tax authorities to reconsider in such reassessment all items of escapement of income with out limitation; at the same time it is open to the assessee to put forward a claim for deduction of any expenditure which was inadvertently omitted in the original assessment proceedings. Likewise, the assessee can also put forward claims for non-taxability of items of receipt which were not put forward in the original assessment. (emphasis ours) In any event, the income for purposes of reassessment cannot be reduced beyond the income originally assessed, as basically an assessment is reopened on account of escapement of income and by allowing an assessee to claim deductions, it is not permissible under law to reduce the income originally assessed. Even if the assessee's fresh claims during the course of reassessment enquiry are accepted, still the allowance of the claims should be limited to the extent to which they reduce the income to that originally assessed under Section 143(3). The Bench, however, went on to add: If a claim for deduction or a claim for non-taxability of a receipt was put forward in the original assessment proceedings and was considered and rejected by the tax authorities and that finding had become final, it is not open to an as-

sessee to put forward those claims once again during the course of reassessment proceedings. The Rajasthan High Court in CIT v. Rangnath Bangur , opined: that once a reassessment proceeding is initiated, the original order of assessment is set aside or ceases to be operative. The finality of such an assessment order is wiped out and a fresh order of assessment would take the place of and completely substitute the initial order of assessment. It is, therefore, clear that when reassessment proceedings are taken, the former assessment is completely wiped out, the entire assessment is reopened and the total income of the assessee is determined afresh. The new order passed on reassessment completely replaces or substitutes the original order of assessment (Emphasis supplied) 26. The High Court noticed an earlier judgment of the same High Court in Hiralal v. CIT (Raj.) (supra) [one of the Judges Ms. Kanta Bhatnagar J. was common to both the Judgments] wherein, it had been held that in reassessment proceedings the jurisdiction of ITO was confined to such income alone which had escaped assessment but struck a divergent note and said: reassessment proceedings cannot be confined only to such income which has escaped assessment, but the entire assessment proceedings are set at large and reopened and the earlier order of assessment is set aside or wiped out and substituted by the order passed upon reassessment. [Emphasis supplied] The Bench said that once reassessment proceedings are initiated, the assessing authority has to redetermine afresh the total income of the assessee as also the total sum payable by him as tax under the Act. The Bench, however, went on to say: We may not be understood as holding that the questions which were expressly raised and decided during the assessment proceedings or in the appeals from the original assessment order cannot be reagitated either in the reassessment proceedings or in the appeals taken from the reassessment order. So far as the matters raised and decided in the assessment proceedings or in the appeals against the original assessment order are concerned, they should be considered to have been finally decided between the parties and cannot be reagitated merely because the assessment has been reopened 27. In CIT v. Indian Rare Earth Ltd. 181 ITR 22. Full Bench of the Bombay High Court disagreeing with its earlier judgments in 107 ITR 760 [supra] observed that once valid proceedings under Section 147 are started, the assessing officer has the jurisdiction and duty to complete the entire assessment de-novo and in reassessment proceedings an assessee is entitled to make a claim for deduction even though such claim was not made during the course of the original assessment proceedings. 28. The question which fell for decision of the Supreme Court in Commissioner of Sales Tax v. H.M. Esufali KM. Abdulali (1973) 32 STC 77, was some what different. In that case, an assessment under the Madhya Pradesh General Sales Tax Act, 1958, was made on a dealer for a particular year. Later, on a surprise inspection of the dealers' account books, it was discovered that certain items of sales had escaped assessment. The assessing authority, thereupon, reopened the assessment and while making the reassessment did not confine its attention to the addition of just those suppressed items of sales which were actually brought to light during the subsequent inspection, but invoked his powers by assessing the entire turnover to the best of his judgment by including what he considered to be suppressed turnover. The estimated

figure was larger than the aggregate of the amounts noted down in the surprise inspection report. The argument of the assessee that the assessing authority, while reopening the assessment for bringing to charge the escaped turnover, had no power to make a best judgment reassessment, based on his own estimate was repelled. 29. In Deputy Commissioner of Commercial Taxes v. R.R. Sri Ramulu (1977) 39 STC 177 what was directly in issue before the Supreme Court was, whether an order of enhancement made by the Deputy Commissioner sitting in revision was barred by limitation. That question arose under the Mysore Sales Tax Act, 1957. The said Act fixed a time limit for the exercise of revisional power by the Deputy Commissioner. The Deputy Commissioner's order of enhancement in revision related to certain items which had already figured in the original assessment and not added for the first time in the reassessment. If the date of the original assessment were to enter into the reckoning, the Deputy Commissioner's order was time-barred. It would, however, have been within time if the date of reckoning was taken as the reassessment date. It was in this context that the Apex Court, with reference to the provisions of the Mysore Sales Tax Act, 1957, rendered the judgment. 30. Since, the assessing authority had made an order of assessment during the reassessment proceedings by including the order of original assessment in the reassessment order, the assessee was permitted to question the entire reassessment order within the time prescribed by the Act. 31. The divergent views taken by the High Courts particularly after 1970, apparently are based on the interpretations placed by the courts on the observations made by this Court in V. Jaganmohan Rao and Ors. v. CIT . The following observations from that judgment have been interpreted and read differently by various High Courts: Section 34 in terms states that once the Income-tax Officer decides to reopen the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice under Section 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under Sub-section (2) of Section 22 the previous under-assessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started under Section 34(1)(b) the Income-tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year. 32. The High Courts which have taken the view that in the proceedings under Section 147 of the Act, the entire assessment is reopened, the original assessment "wiped of and assessee can put forward all pleas, even if rejected during the original proceedings, support their conclusions relying on the observation from Jaganmohan Rao's case to the effect that"the previous under assessment is set aside and whole assessment proceedings start afresh", while the High Courts taking the view that the reassessment is confined only to the escaped assessment and an assessee can put forward pleas only in respect thereof, rely upon the observations: when once valid proceedings are started under Section 34(1)(b), the Income-tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year. 33. Let us now examine the

judgment in Jaganmohan Rao's case [supra] to appreciate as to what was laid down in that case as regards the scope of the reassessment proceedings. 34. In Jaganmohan Rao's case the facts were as follows: The assessee was the karta of an HUF. The assessment related to the years 1944-45 to 1946-47. In 1941 the assessee had purchased a spinning mill known as Sri Satyanarayana Spinning Mills, Rajahmundry, for a sum of Rs. 54,731. At the time the purchase was made, there were certain litigations between the sons of the vendor and the vendor in respect of the spinning mill and certain other properties. Ultimately, the matter went on appeal to the Privy Council. When the appeal was pending the assessments were made for the years 1944-45 to 1946-47, and the assessee deposited the amounts for the various years as per the assessment. Thereafter, the Privy Council disposed of the appeal. Pursuant thereto, the ITO treating the decision of the Privy Council as information concerning escaped income issued a notice to the assessee under Section 34 of the Indian I.T. Act, 1922, in respect of a sum of Rs. 1,09,613 received by the assessee as lease income of the mill. While questioning the validity of"reassessment proceedings", one of the contentions that was raised before the Supreme Court was that at the time the original order of assessment was passed, the ITO could have legitimately assessed one-third share of the income which was due to be assessed as per the judgment of the Madras High Court and that there was therefore an escape only to the extent of two-thirds share of the income. 35. This Court inter-alia held that the decision of the Privy Council constituted definite information within the meaning of Section 34 and the proceedings initiated under Section 34 were validly instituted. 36. Repelling the plea of the assessee that the Income-tax Officer could have legitimately assessed one-third share of the income which was due to the assessee according to the judgment of the Madras High Court at the time when the order of original assessment was passed and that the escape was only to the extent of two-thirds share of the income, this Court observed that once the reassessment proceedings were validly initiated with regard to two-thirds share of the income, the jurisdiction of the Income-tax Officer could not be confined only to that portion of the income but extended to bring to tax the entire escaped income and set aside the underassessment previously made. It was in that context that this Court had made the observations as noticed in the earlier part of the judgment: 37. The principle laid down by this Court in Jaganmohan Rao's case, therefore, is only to the extent that once an assessment is validly reopened by issuance of notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under assessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous under assessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not effect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in cases of"underassessment" based on Clauses (a) to (d) of Explanation (I) to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in Jaganmohan Rao's case, therefore, cannot

be read to imply as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recompilation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jaganmohan Rao's case, as if laying down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "under assessment" but to the entire assessment for the year and start the assessment proceeding de-novo giving right to an assessee to reagitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India this Court cautioned: It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment. 38. Although, Section 147 is part of a taxing statute, it imposes no charge on the subject but deals merely with the machinery of assessment and in interpreting a provision of that kind, the rule is that construction should be preferred which makes the machinery workable. Since, the proceedings under Section 147 of the Act are for the benefit of the Revenue and not an assessee and are aimed at garnering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable. 39. As a result of the aforesaid discussion, we find that in proceedings under Section 147 of the Act, the Income Tax Officer may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under Section 148 and where ressessment is made under Section 147 in respect of income which has escaped tax, the Income Tax Officer's jurisdiction is

confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The Income Tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject-matter of proceedings under Section 147. An assessee cannot resist validly initiated reassessment proceedings under this Section merely by showing that other income which had been assessee originally was at too high a figure except in cases under Section 152(2). The words "such income" in Section 147 clearly referred to the income which is chargeable to tax but has "escaped assessment" and the Income Tax Officers' jurisdiction under the Section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceeding cannot be permitted to be reagitated on the assessment being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment. A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as 'escaped income'. Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under Section 147 of the Act which are for the benefit of the Revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings relating to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed. 40. It would be seen that whereas in the case of Anglo French Textile Company Limited's case (supra) the question as to the rights of an assessee to claim 'redoing', 'revising' or 'recomputing' entire income during the reassessment proceedings was left open, that question did not come up for consideration in the case of N.H. shri Ramulu (supra) or H.M. Esufali (supra) or even in Jaganmohan Rao's case (supra). Some of the High Courts, therefore, fell in error in reading those judgments, divorced from the context in which the precise questions came up for consideration in those cases, and to hold that the assessee could 'reagitate' the concluded issues and claim relief in respect of items, finally concluded in the original assessment proceedings, dur-

ing the reassessment proceedings, unconnected with the escapement of income. We cannot, therefore, approve the broad propositions laid in that regard in 46 STC 264; 110 ITR 527; 133 ITR 204; 142 ITR 877; 149 ITR 487; 171 ITR 232 and 181 ITR 22 (supra). 41. Keeping in view the above principles, we may now turn our attention to the question formulated by the. High Court as noticed in the earlier part of the judgment. 42. The Tribunal rightly found that the loss which the assessee wanted to be set off against the 'escaped income' could not be allowed to be so set off because in the original assessment proceedings, no "set off' was claimed or permitted and the original assessment had acquired finality when the appeal against the order of assessment failed before the Appellate Assistant Commissioner and the assessee took no further steps to agitate the issue. The Tribunal was also right in concluding that the item which the assessee wanted to be taken into account in the proceedings under Section 147 of the Act were unconnected with the escapement of income. The High Court clearly fell in error in holding otherwise. Since the original assessment had been concluded finally against the assessee, it was not permissible for the assessee in the reassessment proceedings to seek a review/revision of the concluded assessment for the purpose of computation of the escaped income. The High Court clearly fell in error by permitting the assessee to reagitate, in the reassessment proceedings under Section 147(a) of the Act, the finally concluded assessment proceedings and to grant to him relief in respect of items not only earlier rejected, but also unconnected with the escapement of income by assuming as if the original assessment had not been concluded or was 'still open' 43. Therefore our answer to the question formulated by the High Court and noticed in the earlier part of this judgment is that in the reassessment proceedings it is not open to an assessee to seek a review of the concluded item, unconnected with the escapement of income, for the purpose of computation of the escaped income. 44. The appeals consequently succeed and are allowed. The orders of the High Court are set aside and those of the Tribunal restored. Since the assessee had not put in any appearance, there shall be no order as to costs.