power. No meaningful argument could indeed be advanced to show as to how the acquisition proceedings were a colourable exercise of power by the State Government. Initially when the writ petition was filed the petitioners made allegations of *mala fides* against Shri Harpal Singh, former Agriculture Minister but those allegations were given up and his name was deleted from the memorandum of parties by order dated 13th November, 1998. We have no hesitation in rejecting this argument of the learned counsel for the petitioners.

(5) No other point was raised.

(6) In the result, there is no merit in the writ petition and the same stands dismissed. No costs.

(7) Office is directed to list civil writ petition no. 4884 of 1985 for final hearing after informing the counsel for the parties.

J.S.T.

Before N.K. Sodhi & N.K. Sud, JJ

VIPAN KHANNA,—*Petitioner*

versus

COMMISSIONER OF INCOME TAX, AMRITSAR & OTHERS,—*Respondents*

C.W.P. No. 17615 of 1998

5th July, 2000

Income Tax Act, 1961—Ss. 142, 143, 147, 148 & 154/155—Direct Tax Laws (Amendment) Act, 1987—Ss. 143 & 147—Petitioner claiming depreciation @ 50% against the permissible rate of 40%—I.T.O. restricting the claim to 40% and adding the excess depreciation to the returned income—Petitioner challenging the adjustment made by the I.T.O.—Commissioner allowing the appeal and deleting the additional amount—I.T.O. initiating proceedings under Section 147 for assessing the income which had escaped assessment due to excessive claim of depreciation—Assistant Commissioner requiring the petitioner to produce the books of accounts and furnish the information on various points—Deputy Commissioner rejecting the appeal of the petitioner—Challenge thereto—Whether the Assessing Officer can launch inquiry into the issues which were not connected with the claim of depreciation—Held, no—Such inquiry could only be made by issuing a notice under Section 143(2) within the stipulated period—No notice under Section 143(2) served on the assessee within the stipulated period of 12 months

and as such return filed by him becomes final—This finality could not be disturbed even in proceedings under Section 147—Impugned letter requiring the petitioner to furnish information on issues in respect of which there is no allegation of any escapement or under-assessment of income tantamounts to reviewing the whole assessment—Writ allowed, impugned letter vacated directing the Assessing Officer to proceed with the assessment under Section 147 in accordance with law.

. *Held* that the petitioner has claimed depreciation in the returns at the rate of 50% and he has nowhere disputed the fact that the admissible rate of depreciation to him was 40%. This fact alone was sufficient for the I.T.O. to initiate proceedings under Section 147 of the Act. It is interesting to note that on the one hand the petitioner maintains that he is entitled to higher depreciation yet on the other hand while filing the returns in response to the notices under Section 148 of the Act, he has once again claim the same amount of depreciation as claimed in the original return. Even otherwise the petitioner could not possibly be allowed to make a fresh claim of depreciation in the proceedings under Section 147 of the Act. Thus, no fault can be found in the action of the I.T.O. in initiating proceedings under Section 147 of the Act.

(Para 10)

Further held, that in view of the amendment made in Section 147 of the Act w.e.f. 1st April, 1989 the assessing officer could not only assess or reassess the escaped income in respect of which proceedings under Section 147 have been initiated but also any other income chargeable to tax which may have escaped assessment and which comes to his knowledge subsequently in the course of such proceedings. This proposition is not even disputed by the learned counsel for the petitioner. However, what is disputed is the action of the assessing officer in embarking upon fresh inquiries on issues which are unconnected with the issue which forms the basis of proceedings under Section 147 of the Act. From the letter dated 30th July, 1998 it is evident that the assessing officer was seeking general information on other issues merely to verify the return. Such general inquiry could only be made by issuing a notice under sub section (2) of Section 143 within the stipulated period which had already expired. Admittedly it is not the case of the revenue that during the course of proceedings under Section 147 of the Act it had come across any material relating to the items mentioned in the impugned letter dated 30th July, 1998 suggesting escapement of income under any of those heads. In this view of the matter the petitioner would be justified in claiming that

the letter dated 30th July, 1998 issued by the Assistant Commissioner tantamounts to making fishing inquiries on concluded matters unconnected with the issue on the basis of which proceedings under Section 147 had been initiated. This indeed is not permissible under the law.

(Para 13)

Further held that the impugned letter requiring the peritioner to furnish information on issues in respect of which there is no allegation of any escapement or under-assessment of income either in the reasons recorded or during the course of proceedings under Section 147 of the Act tantamounts to reviewing the whole assessment. This could not be done. The returns filed in response to notices under Section 148 were the same as filed originally. The assessing officer had the option to issue a notice under Section 143(2) requiring the assessee to produce evidence in support of the returns if he considered it necessary to ensure that the assessee had not understated the income or had not computed excessive loss or had not under paid the tax in any manner. Such a notice could be issued only within twelve months from the end of the month in which the respective returns had been filed originally. Admittedly no such notice had been served on the petitioner within the stipulated period, and therefore, it has to be held that the assessing officer had not found it necessary to require the petitioner to produce any evidence in support of the returns. Thus, the returns filed by the petitioner had become final. This finality could not be disturbed even in proceedings under Section 147 of the Act in respect of issues on which there is no material on record suggesting any escapement of income.

(Para 13)

Further held, that the letter dated 30th July, 1998 issued by the assessing officer in so far as it relates to matters unconnected with the issue of depreciation as also the directions issued by the Deputy Commissioner under Section 144-A of the Act Dated 26th October, 1998 cannot be sustained. The same are hereby vacated. The assessing officer will now proceed with the assessment under Section 147 of the Act in accordance with law.

(Para 15)

Hemant Kumar, Advocate, *for the petitioner.*

R.P. Sawhney, Senior Advocate with Rajesh Bindal, Advocate, *for the respondents.*

JUDGMENT

N.K. Sud, J.

(1) The petitioner is the proprietor of M/s Khanna Engineers, Pathankot and was assessed to income tax within the jurisdiction of the Income-Tax Officer, Pathankot (for shor "the I.T.O."). He filed his return of income for the assessment year 1992-93 on 31st March, 1994 declaring a loss of Rs. 8,100. On the same day this return was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short "the Act") wherein a minor adjustment of Rs. 104 was made and the loss was determined at Rs. 7,996. Lateron the ITO noticed that in the statement of accounts filed with the return the petitioner had claimed depreciation on trucks at the rate of 50% against 40% admissible to him and that he had not included the income of Rs. 23,391 from D.C. Khanna & Sons, Chamba in the total income shown in the return. With a view to rectify these mistakes the ITO issued a notice under section 154/155 of the Act on 1st May, 1995 requiring the petitioner to file objections, if any, to the proposed rectification of the aforesaid mistakes. In response to the said notice the petitioner furnished replies dated 11th May, 1995 and 29th May, 1995 claiming that no rectification was called for. He claimed that the depreciation claimed in the return was Rs. 8,97,902 whereas the depreciation admissible to him even at the rate of 40% worked out to Rs. 8,98,321. For this purpose a depreciation chart was enclosed with the reply. It was explained in the reply that there was one more truck owned by the petitioner on which depreciation had not been claimed in the return and it was because of this reason the claim of depreciation worked out to an amount higher than what was claimed in the return. Similarly, he explained that the income from M/s D.C. Khanna & Sons, Chamba had duly been accounted for in the returned income.

(2) During the pendency of proceedings under section 154/155 of the Act the petitioner filed his return of income for assessment year 1993-94 on 31st March 1995 declaring an income of Rs. 76,586. From the statements of account attached with the return it was evident that the depreciation on trucks had again been claimed at the rate of 50%. The I.T.O., therefore, processed the return under Section 143(1)(a) of the Act on 5th May, 1995, wherein he restricted the claim of depreciation to 40% and added the excess depreciation of Rs. 89,790 to the returned income by way of an adjustment. The requisite intimation was sent to the petitioner. The petitioner challenged the adjustment made by the I.T.O. under Section 143(1)(a) of the Act before the Commissioner of Income-tax (Appeals), Jammu, who by his order dated 14th August, 1996 allowed the appeal and deleted the addition of

Rs. 89,790 on the ground that such a disallowance did not fall within the ambit of *prima facie* adjustments permissible under Section 143(1)(a) of the Act.

(3) In the above factual background the I.T.O. chose not to proceed further with the proceedings under Section 154/155 of the Act initiated in respect of assessment year 1992-93. Instead he initiated proceedings under Section 147 of the Act for assessing the income which had escaped assessment due to excessive claim of depreciation by issuing notices under Section 148 of the Act on 31st December, 1996 for both the assessment years viz. 1992-93 and 1993-94. Before initiating the above proceedings the following reasons were recorded as required under sub-section (2) of Section 148 of the Act :—

"Assessment year 1992-93

31st December, 1996.—In this case the assessee claimed excessive depreciation @ 50% whereas assessee was entitled to depreciation @ 40% under Income Tax Rules. Hence I have reasons to believe that having income chargeable to tax was escaped assessment for Assessment Year 1992-93;

Accordingly issue notice under Section 148 of Income Tax Act, 1961 for Assessment Year 1992-93."

Identical reasons were recorded in respect of Assessment year 1993-94 as well.

(4) In response to the aforesaid notices under Section 148 of the Act the petitioner filed his returns of income on 1st April, 1997 declaring the same income as had been shown in returns originally filed for both the years. During the pendency of proceedings under Section 147 the jurisdiction of the case stood transferred to the Assistant Commissioner of Income-tax, Circle, Pathankot. To finalise the assessments on the basis of proceedings initiated under Section 147 of the Act, the Assistant Commissioner issued notice under Sections 143(3) and 142(1) of the Act requiring the petitioner to produce the books of accounts and furnish the information specified in his letter dated 30th July, 1998. Since this letter is in dispute the same is being reproduced as under for facility of reference :—

"Office of the
Assistant Commissioner of Income Tax,
Circle-Pathankot.

Dated, Pathankot the 30th July, 1998

To

Shri Vipan Khanna,
C/o Pushap Palace,
Dhangu Road,
Pathankot.

Dear Sir,

Sub : Assessment year 1992-93 and 1993-94 Regarding.

In order to facilitate the finalisation of your above said assessments, you are required to please furnish/produce the following details/information :-

(i) Copies of tenders submitted and agreements made with the authorities concerned for carriage contract may please be furnished.

(ii) You have claimed carriage expenses. In this connection, you are requested to please furnish copy of agreements in case the carriage contract was given to sub-contractors by you.

(iii) Income and expenditure account relating to each truck may please be furnished.

(iv) Certificates from the banks for obtaining overdraft facility and payment of interest on loans alongwith nature of security offered for obtaining the loans may please be furnished.

(v) Details off right payable account may please be furnished.

(vi) If any new truck is purchased during the accounting period relevant to the assessment years under consideration, photostat copy of the asessment years under consideration, photostat copy of the purchase bill along with documentary evidence that the same had been used for business purposes may please be furnished.

2. Your case stands fixed for hearing on 11th August, 1998, when you are requested to please produce complete account books together with the supporting vouchers etc. relating to contract business and

truck income. Notices under Section 143(2) and 142 are enclosed herwith.

Yours faithfully,

(Sd.) . . .,

(Labh Singh)
Assistant Commissioner of Income Tax
Circle-Pathankot

(5) The petitioner was of the view that the aforesaid letter requiring him to produce the books of account and furnish information on various points was not warranted in proceedings under Section 147 of the Act as the same were totally unrelated to the issue which was the basis for initiation of such proceedings. According to him the reasons recorded by the I.T.O. clearly show that the only ground for initiating the proceedings under Section 147 of the Act was that depreciation on trucks had been allowed at the rate of 50% against the permissible rate of 40% and, therefore, he could not be required to furnish information on other issues which stood concluded by the assessments framed under Section 143(1)(a) of the Act on 31st March, 1994 and 5th May, 1995 for assessment years 1992-93 and 1993-94 respectively. He, therefore, made an application under Section 144-A of the Act before the Deputy Commissioner of Income Tax, Amritsar requesting him to direct the Assistant Commissioner to confine his inquiry in proceedings under Section 147 of the Act to the issue of depreciation alone and treat the letter dated 30th July, 1998 issued by him on other unrelated issues as redundant. For this purpose the petitioner placed reliance on the decision of the apex Court in the case of *Commissioner of Income-tax* vs. *Sun Engineering Works Pvt. Ltd.* (1). The Deputy Commissioner of Income-tax,—*vide* his order dated 26th October, 1998 (Annexure P-7) rejected the assessee's contention on the ground that in view of the changes incorporated in Sections 143 and 147 of the Act by the Direct Tax Laws (Amendment) Act, 1987 the judgment of the Supreme Court in *Sun Engineering Works Pvt. Ltd.* (Supra) was not applicable. On the other hand he relied on another decision of the Apex Court in the case of *V. Jagmohan Rao and others* vs. *The Commissioner of Income-tax and Excess Profit tax* (2) to hold that once an assessment was re-opened by issue of a notice under Section 148 of the Act, the ITO's jurisdiction was not restricted only to the portion of escaped income in respect of which the proceedings had been initiated but also to all other items of income which may have

(1) (1992) 198 ITR 297
(2) (1970) 75 ITR 373

escaped assessment. It is against this order that the present writ petition has been filed.

(6) Shri Hemant Kumar, Advocate, appearing on behalf of the petitioner contended that the assessments for assessment years 1992-93 and 1993-94 stood concluded on 31st March, 1994 and 5th May, 1995 respectively when intimation under Section 143(1)(a) of the Act had been sent. He has conceded that the depreciation on trucks in the return had been claimed at the rate of 50%. However, he has also pointed out that it had been explained to the assessing officer in response to his notice under Section 154/155 for the assessment year 1992-93 that the petitioner had omitted to claim depreciation on one truck and if the depreciation on all the trucks was computed even at the rate of 40% the petitioner would be entitled to deduction of a bigger amount than what had been claimed in the return. Similar explanation had also been furnished before the Commissioner of Income-tax (Appeals) during the course of appellate proceedings for assessment year 1993-94 wherein the petitioner had challenged the adjustment made under Section 143(1)(a) of the Act on this issue. According to the learned counsel, the assessing officer was satisfied with this explanation as he had not taken any action under Section 154/155 for assessment year 1992-93 nor had the revenue preferred an appeal before the Tribunal against the order of the Commissioner of Income-tax (Appeals) for assessment year 1993-94. He further contended that despite this factual background the ITO initiated proceedings under Section 147 of the Act on the ground that the excessive depreciation at the rate of 50% had been claimed against the entitlement of 40%. The petitioner, therefore, had challenged the very initiation of proceedings under Section 147 of the Act before the Assistant Commissioner and for this purpose a detailed letter dated 13th July, 1998 was addressed to him. In this letter the petitioner had placed reliance on some decisions of the Supreme Court and various High Courts to show that the proceedings had not been validly initiated. The grievance of the petitioner is that instead of dealing with objections raised by him, the assessing officer issued the impugned letter dated 30th July, 1998 requiring him to furnish explanations on issues which were totally unconnected with the issue of depreciation on the basis of which the proceedings had been initiated. This, according to the petitioner, tantamounts to a review of concluded matters which was not permissible under the law. For this purpose reliance was placed on the decision of the Supreme Court in the case of *Sun Engineering Works Pvt. Ltd.* (supra). The petitioner claims that when he approached the Deputy Commissioner of Income-tax under Section 144A of the Act seeking direction to the assessing officer to confine the scope of his

enquiry to the issue of depreciation and not to make fishing inquiries into concluded items unconnected with the escapement of income, the Deputy Commissioner wrongly rejected the same by his order dated 26th October, 1998 by misapplying certain observation of the Supreme Court in the case of *V. Jagmohan Rao & Others* (Supra). It was argued that the Deputy Commissioner had failed to notice that the scope of these very observations had duly been explained by the Supreme Court itself in its subsequent judgment in *Sun Engineering Works Pvt. Ltd.* (Supra).

(7) Shri R.P. Sawhney, Sr. Advocate, appearing on behalf of the respondents supported the order dated 26th October, 1998 on the ground that once proceedings under Section 147 of the Act are validly inititiated, the jurisdiction of the assessing officer extends to assess or reassess not only the escaped income to which the proceedings related but also other items of income which may have escaped assessment and which come to the notice of the assessing officer during the course of such proceedings. According to him the case law relied upon by the petitioner related to the law as it stood prior to amendment of Section 147 with effect from 1st April, 1989. He elaborated this argument by comparing the language of Section 147 before and after the amendment. The relevant provisions of Section 147 before the amendment read as under :—

"If

(a) the Assessing Officer has reason to believe that, by reason failure of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Assessing 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 Assessing 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 under-assessed; 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 (11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of this section."

(8) However, after the amendments with effect from 1st April, 1989 this section presently reads as under :

"If the Assessing Officer has reason to believe that any 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 and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 of this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly

all material facts necessary for his assessment, for that assessment year.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing provision.

Explanation 2.—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 no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

(9) According to the learned counsel, under the unamended provision, the assessing officer could assess or re-assess only "such income" which according to him had escaped assessment on the basis of which the proceedings had been initiated. However, after the amendment he has been empowered not only to assess such income but *"also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the proceedings under this section"*. Thus, according to him this material change in the language of section 147 of the Act entitles the assessing officer to make the entire assessment afresh.

(10) We have heard the learned counsel for the parties and perused the records. We may mention that the initiation of proceedings under section 147 of the Act has not been challenged in this writ petition. However, in the replication to the written statement the petitioner has raised this point and had also reiterated it during the course of arguments. The petitioner claims that the only ground on which the proceedings under section 147 had been intitiated was that the depreciation of trucks had been claimed at the rate of 50% against the admissible rate of 40%. However, according to the petitioner even if the depreciation was to be calculated at the rate of 40%, the depreciation admissible to him would be higher than what has been claimed in the return because he was entitled to depreciation on another truck owned by him on which he had omitted to claim the depreciation. We are unable to accept this contention. From the facts already noticed it is absolutely clear that the petitioner has claimed depreciation in the returns at the rate of 50% and he has nowhere disputed the fact that the admissible rate of depreciation to him was 40%. This fact alone was sufficient for the I.T.O. to initiate proceedings under Section 147 of the Act as has been done in the present case. It is interesting to note that on the one hand the petitioner maintains that he is entitled to higher depreciation yet on the other hand while filing the returns in response to the notices under section 148 of the Act, he has once again claimed the same amount of depreciation as claimed in the original return. Even otherwise the petitioner could not possibly be allowed to make a fresh claim of depreciation in the proceedings under section 147 of the Act as has been held by the Supreme Court in the case of *Sun Engineering Works (P) Ltd.'s case (Supra).* Thus no fault can be found in the action of the I.T.O. in initiating proceedings under section 147 of the Act

(11) The next question for our consideration is whether after initiating the proceedings under section 147 of the Act on the ground that the petitioner had claimed depreciation at a higher rate, the assessing officer would be justified in launching inquiry into the issues which were not connected with the claim of depreciation. During the course of arguments the petitioner has time and again emphasised that the original assessments for assessment years 1992-93 and 1993-94 had been framed under section 143(1)(a) of the Act on 31st March, 1994 and 5th May, 1994 respectively. At the outset we may mention that under the new procedure of assessment introduced with effect from 1st April, 1989 the processing of a return under section 143(1)(a) of the Act cannot be equated with framing of an assessment. Prior to the amendment the assessing officer could frame an assessment under section 143(1) of the Act without requiring the presence of the assessee.

Alternately he could issue a notice under sub-section (2) of Section 143 of the Act and require the assessee to produce his books of accounts and other evidence in support of the return filed by him and thereafter frame an assessment under sub-section (3) of section 143 of the Act. Therefore, it was necessary that an assessment order either under sub-section(1) or under sub-section (3) of Section 143 of the Act had to be passed. However, after the amendment made with effect from 1st April 1989 the position has materially changed. Now the assessing officer initially processes the return under Section 143(1)(a) of the Act and determines the amount payable or refundable on that basis. It is not necessary for him to frame an assessment in each and every case. However, in case he chooses to verify the return and frame an assessment, he has to issue a notice under sub-section (2) of section 143 and require the assessee to produce his books of accounts and other material in support of the return. Thereafter he can make an assessment under sub-section(3) of section 143 of the Act. Another important change incorporated in sub section (2) of Section 143 of the Act is that the notice under this sub-section cannot be served on an assessee after the expiry of 12 months from the end of the month in which the return is furnished. Therefore, in a case where a return is filed and is processed under section 143(1)(a) of the Act and no notice under sub-section (2) of section 143 of the Act thereafter is served on the assessee within the stipulated period of 12 months, the assessment proceedings under section 143 come to an end and matter becomes final. Thus, although technically no assessment is framed in such a case, yet the proceedings for assessment stand terminated. The Central Board of Direct Taxes,—*vide* its circular No. 549 dated 31st October, 1989 (1990) 182 ITR (St.) 1 has explained the new procedure of assessment in paras 5.12 and 5.13 as under :—

> "5.12 Since, under the provisions of sub-section(1) of the new section 143, an assessment is not to be made now, the provisions of sub-sections (2) and (3) have also been recast and are entirely different from the old provisions. A notice under sub-section (2) which will be issued only in cases picked up for scrutiny, is now issued only to ensure that the assessee has not understated his income or has not computed excessive loss or has not underpaid the tax in any manner while furnishing his return of income. This means that, under the new provisions, in an assessment order passed under section 143(3) in a scrutiny case, neither the income can be assessed at a figure lower than the returned income, not loss can be assessed at a figure higher than the returned loss, not a further refund can be given except what was due on the basis of the

returned income, and which would have already been allowed under the provisions of section 143(1)(a)(ii).

5.13 A proviso to sub-section (2) provides that a notice under the sub-section can be served on the assessee only during the financial year in which the return is furnished or within six months from the end of the month in which the return is furnished, whichever is later. This means that the Department must serve the said notice on the assessee within this period, if a case is picked up for scrutiny. *It follows that if an assessee, after furnishing the return of income does not receive a notice under section 143(2) from the Department within the aforesaid period, he can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return."*

(Emphasis supplied)

(12) Thus, it is evident that the Board itself concedes that if the assessee after furnishing the return of income does not receive a notice under section 143(2) of the Act within the stipulated period he can take that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return. Here it needs to be clarified that in the Board circular (Supra) the stipulated period has been referred to as six months as it was the period specified originally when new provision was introduced with effect from 1st April, 1989. However,—*vide* amendment made by the Finance (No. 2) Act, 1991, this period was enhanced to twelve months with effect from 1st October, 1991. In the present case it is an admitted position that no notice under section 143(2) of the Act had been served to the petitioner within the stipulated period and as such his return had become final.

(13) In the background of this settled position we may now examine the validity of the letter dated 30th July, 1998 (Annexure P-5) issued by the Assistant Commissioner which has been upheld by the Deputy Commissioner,—*vide* his order dated 26th October, 1998 (Annexure P-7). There can be no dispute about the argument advanced on behalf of the revenue that in view of the amendment made in section 147 of the Act with effect from 1st April, 1989 the assessing officer could not only assess or reassess the escaped income in respect of which proceedings under section 147 have been initiated but also an other income chargeable to tax which may have escaped assessment and which comes to his knowledge subsequently in the course of such proceedings. This proposition is not even disputed by the learned counsel for the petitioner. However, what is disputed is the action of

the assessing officer in embarking upon fresh inquiries on issues which are unconnected with the issue which forms the basis of proceedings under section 147 of the Act. From the letter dated 30th July, 1998 it is evident that the assessing officer was seeking general information on other issues merely to verify the return. As already observed such general inquiry could only be made by issuing a notice under sub-section (2) of section 143 within the stipulated period which in the present case had already expired. Admittedly it is not the case of the revenue that during the course of proceedings under section 147 of the Act it had come across any material relating to the items mentioned in the impugned letter dated 30th July, 1998 suggesting escapement of income under any of those heads. In this view of the matter the petitioner would be justified in claiming that the letter dated 30th July, 1998 issued by the Assistant Commissioner tantamounts to making fishing inquiries on concluded matters unconnected with the issue on the basis of which proceedings under Section 147 had been initiated. This indeed is not permissible under the law. The petitioner has rightly relied on the decision of the Supreme Court in the case of *Sun Engineering Works Pvt. Ltd.* (Supra) to contend that the jurisdiction of the Income-tax Officer in proceedings under Section 147 of the Act is confined only to such income which has escaped tax or has been under-assessed and does not extend to revising, re-opening or re-considering the whole assessment. In the present case, "the impugned letter dated 30th July, 1998 requiring the petitioner to furnish information on issues in respect of which there is no allegation of any escapement or under-assessment of income either in the reasons recorded or during the course of proceedings under Section 147 of the Act tantamounts to reviewing the whole assessment. This could not be done. The returns filed in response to notices under Section 148 of the Act were the same as filed originally. The assessing officer had the option to issue a notice under Sections 143(2) of the Act requiring the assessee to produce evidence in support of the returns if he considered it necessary to ensure that the assessee had not understated the income or had not computed excessive loss or had not under paid the tax in any manner. Such a notice could be issued only within twelve months from the end of the month in which the respective returns had been filed originally. Admittedly no such notice had been served on the petitioner within the stipulated period and, therefore, it has to be held that the assessing officer had not found it necessary to require the petitioner to produce any evidence in support of the returns. Thus, the returns filed by the petitioner had become final. This finality could not be disturbed even in proceedings under section 147 of the Act in respect of issues on which there is no material on record suggesting any escapement of income. In the present case except for excessive

claim of depreciation there is no material to suggest any under assessment or escapement of income under any other item. There is no gainsaying the fact that in proceedings under Section 147 of the Act it is only the escaped income which has to be assessed or reassessed. Thus, we are of the considered view that as per the law laid down by the apex court in the case of *Sun Engineering Works Pvt. Ltd. (Supra)* when proceedings under Section 147 of the Act are initiated, the proceedings are open only qua items of under-assessment. The finality of assessment proceedings on other issues remains undisturbed. According to us it makes no difference whether the assessment proceedings have become final on account of framing of an assessment under Section 143(3) of the Act or on account of non issue of a notice under Section 143(2) of the Act within the stipulated period. The amendments made in Sections 143 and 147 of the Act with effect from 1st April, 1989 do not in any manner negate this proposition of law as enunciated by the Supreme Court in the case of *Sun Engineering Works Pvt. Ltd. (supra).*

(14) We may also mention that the interpretation placed on the observations of the Supreme Court of V. *Jagmohan Rao's case* (Supra) by the Deputy Commissioner in his order dated 26th October, 1998 is not correct. He was not correct in holding that once valid proceedings under Section 147 are started the whole assessment proceedings start afresh. This has been explained by the apex Court itself in *Sun Engineering Works Pvt. Ltd's case (supra)* at page 319 of the report as under :—

> "The principle laid down by this Court in V. Jaganmohan Rao's case, therefore, is only to the extent that once an assessment is validly reopened by issuance of a notice under section 22(2) of the 1922 Act (corresponding to section 148 of the Act), the previous underassessment is set aside and the Income-tax Officer 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 underassessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not affect 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 1 to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in V. Jagmohan Rao's case, (1970) 75 ITR 373 (SC), 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 recomputation of the income or reducing 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 V. Jagmohan Rao's case (1970) 75 ITR 373 (SC), as laying down that reassessment wipes out the original assesment and that reassessment is not only confined to "escaped assessment" or "underassessment" but to the entire assessment for the year and starts the assessment proceedings de novo giving the right to an assessee to reagitate matters which he had lost during the original assessment proceedings, 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."

(Emphasis supplied)

(15) In view of the above discussion, we are satisfied that the letter dated 30th July, 1998 issued by the assessing officer in so far as it relates to matters unconnected with the issue of depreciation as also the directions issued by the Deputy Commissioner under Section 144A of the Act dated 26th October,1998 cannot be sustained. The

same are hereby vacated. The assessing officer will now proceed with the assessment under section 147 of the Act in accordance with law. For the sake of clarification, we may repeat that nothing observed by us in this case would debar the assessing officer to bring to tax any other item of income which may have escaped assessment and which comes to his notice during the course of the proceedings under section 147 of the Act. However, for this purpose he cannot be allowed to make fishing inquiries to probe if any other income had escaped assessment or not. Such inquiries can only be permitted if in the first instance some material comes to his notice to suggest that some other item of income may have escaped assessment or had been under assessed. In that event he would be perfectly justified in requiring the petitioner to furnish the requisite information on such other issue as well.

(16) The writ petition is, therefore, allowed in the above terms. However, in the circumstances of the case, there will be no order as to costs.

R.N.R.

Before S.S. Nijjar, J

LAKHWINDER SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

Crl. M. No. 24143/M of 1998

21st August, 2000

Indian Penal Code, 1860—Ss. 498-A, 406 & 120-B—F.I.R. against brother of the husband on general allegations—No specific allegations of either entrustment of any articles of dowry or cruelty—Whether general allegations are sufficient to try a person for offences under Section 498-A & 120-B IPC—Held, no—Even if the allegations are taken at their face value and accepted in their entirety, prima facie no offence is made out—Proceedings liable to be quashed.

Held that, there are no specific allegations of either entrustment or cruelty against the petitioner. One of the allegations against the petitioner is that he had sister-in-law. This allegation by itself is of no consequence. There is no allegation of misappropriation. The allegations are generally made against the in-laws of the complainant. Even if the allegations are taken at their face value, no offence is made out.

(Paras 13 & 17)