and sale of agricultural produce from a member is exempt from levy of income tax, and such income is to be deducted in computing the total income of the assessee. We follow that view.

(7) As regards the second point regarding receipt of subsidy, in *Ludhiana Central Co-operative Consumers, Stores Ltd.* v. *C.I.T., Patialal* (2), and *V.S.S.V. Meenakshi Achi and another* v. *C.I.T., Madras* (3), it has been held that the character of the receipt is to be consdered and if subsidy was given towards the purchase price of foodgrain it will partake the character of reducing purchase price by the amount of subsidy with the result that the income will go up by the amount of subsidy. Even if the income of the assessee goes upby Rs. 40,000, since this relates to the sale and purchase of agricultural produce from its members, this would also be deducted while computing the total income of the assessee.

(8) For the reasons recorded above, we answer the question in favour of the assessee in the affirmative. No costs.

S.C.K.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, Ludhiana,—*Applicant.*

versus

M/S AMRITSAR SWADESHI WOOLLEN MILLS, AMRITSAR,—*Respondent.*

Income Tax Reference No. 17 and 18 of 1981

April 11, 1989.

Incoe Tax Act (XLIII of 1961)—S. 147(b)—Assessment framed—Entire nterial available on record—Change of opinion by I.T.O—Whetheentitling I.T.O. to make reassessment—Nature of advance not ascrtained—Remand of case by Tribunal—Such remand—Whethelegal.

(2) 22 I.T.R. 942.

(3) 1 I.T.R. 253 at 260 (S.C.).

Held, that the entire material was already with the Income Tax Officer when he framed assessment and in reassessment proceedings he only wanted to change his opinion. Merely change of opinion does not give jurisdiction to initiate reassessment proceedings, and even if the order of the Income Tax Officer is erroneous, the remedy would lie elsewhere but not by initiating reassessment proceedings. Accordingly, we are of the opinion that the Tribunal was justified in holding that the reassessment proceedings for the assessment year 1972-73 were not validly reopened and we answer the referred question in favour of the assessee, in the affirmative.

(Para 8)

Held, that the Tribunal had the power to remand the cae to the Income Tax Officer for fresh decision. The proceedings or this year were not reassessment but assessment proceedings. The crucial point would be to find out the nature of advance to the partners and then to frame assessment. No definite finding was either given by the Income Tax Officer or by the Appellate Assistant Commissioner and, therefore, the Tribunal was right in rmanding the case to the Income Tax Officer for fresh disposal.

(Para 9)

Referece under section 256 (1) *of the Income-tax Act*, 1961 *by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsr, to the Hon'ble High Court of Punjab and Haryana for opinion of te following questions of law arising out of the Tribunal's order in R.A. No.* 6(*ASR*)/1979 *and R.A. No.* 13(*ASR*)/1979 *in C.O. No.* 7(*ASR*)/1977-78 *and ITA No.* 289(*ASR*)/1977-78 *Assessment year* 1972-73 *and* 1974-75, *respectively* :

"Whether on the facts and in the circumstances of he case, the Appellate Tribunal was right in law in holing that the assessment of the assessee firm for the aessment year 1972-73 *was not validly reopened by the IO under section* 147 (b) *of the Income-tax Act*, 1961?"

"Whether the Tribunal was justified in law to set side the findings of the AAC as respects the deletion of a amount of interest of Rs. 36,566 *held to be a permissible eduction in the computation of the assessee's business inme and restore the matter to the ITO for fresh disposal*

L. K. Sood, Advocate, *for the Applicant.*

S. S. Mahajan, Advocate with H. S. Sangha, Advocate *for the Respondent.*

Commissioner of Income Tax, Ludhiana *v.* M/s. Amritsar Swadeshi Woollen Mills, Amritsar (G. C. Mital, J.)

JUDGMENT

Gokal Chand Mital, J.

(1) Amritsar Swadeshi Woollen Mills, the assessee, was a partnership firm and during the proceedings for the assessment year 1973-74, the Income Tax Officer noticed that there were debit balances in the accounts of two partners to the tune of over Rs. three lacs and from these partners interest was not being charged on the debit balances whereas the assessee firm had paid substantial interest to its creditors. On taking note of the aforesaid facts he scrutinized assessment records for the earlier three years and noticed that for those years also there were huge debit balances in the accounts of those partners. Although the assessment for the assessment year 1972-73 had already been completed, the Income Tax Officer issued notice under section 148 read with section 147(b) of the Income-Tax Act, 1961 (hereinafter called 'the Act'). The assessee challenged the jurisdiction of the Income Tax Officer to reopen the assessment on the ground that there was no material before the Income Tax Officer to do so as all facts were already before him when the original assessment was framed and on change of opinion reassessment proceedings could not be started.

(2) The Income Tax Officer did not agree with the objections of the assessee and on reassessment added Rs. 35,413 as income by way of interest on the debit balance at the rate of 12 per cent per annum after recording a finding that the aforesaid amount had escaped assessment.

(3) The assessee challenged the reassessment by filing an appeal before the Appellate Assistant Commissioner who accepted the assessee's contention on merits and deleted the addition but held that the assessment proceeding under section 148 read with 147(b) of the Act were properly initiated.

(4) The department went up in appeal before the Income Tax Appellate Tribunal (for short 'the Tribunal'), Amritsar, in which assessee filed cross-objections regarding the validity of the reopening of the assessment. The Tribunal came to the conclusion that there was no material before the Income Tax Officer giving jurisdiction to reopen the assessment and with this finding cancelled

the additions made by the Income Tax Officer. On this matter, the following question has been referred by the Tribunal on a mandamus issued by this Court :

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment of the assessee firm for the assessment year 1972-73 was not validly reopened by the ITO under section 147(b) of the Income-tax Act, 1961 ?"

(5) For the assessment year 1974-75, the Income Tax Officer found that substantial interest had been paid by the assessee firm to its creditors but no interest had been charged on the debit balance of two partners which was over three lacs of rupees. The Income Tax Officer had found similar position in the assessment year 1973-74 and since on the debit balance of the partners interest at the rate of 12 per cent per annum was disallowed for that year, for the assessment year in question also similar deduction was disallowed with the result that Rs. 36,566 were added back to the total income of the assessee.

(6) On appeal, the Appellate Assistant Commissioner deleted the addition on the ground that capital available with the assessee was much more than the fund advanced to the partners. The Revenue went up in appeal before the Tribunal and the Tribunal set aside the findings of the Appellate Assistant Commissioner and the Income Tax Officer because no definite findings had been given by those officers and restored the matter to the file of the Income Tax Officer for fresh disposal after taking note of the observations made in the order. The following question has been referred on a mandamus issued by this Court :

> "Whether the Tribunal was justified in law to set aside the findings of the AAC as respects the deletion of an amount of interest of Rs. 36,566 held to be a permissible deduction in the computation of the assessee's business income and restore the matter to the ITO for fresh disposal ?"

(7) We first proceed to decide the question referred for the assessment year 1972-73 in which reassessment proceedings were started. The question posed is whether the Income Tax Officer validly reopened the proceedings under section 147(b) of the Act.

To justify the reopening of the proceedings, counsel for the Revenue has relied upon a decision of the Supreme Court in *Kalyanji Mavji & Co.* v. *Commissioner of Income-Tax West Bengal II*(1), and particularly on the following observations :—

"— — — — — —

> Where in the original assessment the income liable to tax has escaped assessment due to oversight, inadvertance or a mistake committed by the Income Tax Officer."

the proceedings can be reopened. This judgment was subject matter of criticism before a larger bench of the Supreme Court in *Indian and Eastern Newspaper Society* v. *C.I.T., New Delhi* (2), and the following observations were made :—

> "Now, in the case before us, the ITO had, when he made the original assessment, considered the provisions of Sections 9 and 10. Any different view taken by him afterwards on the application of these provisions would amount to a change of opinion on material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under Section 147(b). Reliance is placed on *Kalyanji Mavji & Co.* v. *C.I.T.* (1976) 102 ITR 287 (SC) where a Bench of two learned Judges of this Court observed that a case where income had escaped assessment due to the "oversight, inadvertence or mistake" of the ITO must fall within section 34 (1) (b) of the Indian I.T. Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels further than the statute warrants insofar as it can be said to lay down that if, on re-appraising the material considered by him during the original assessment, the ITO discovers that he has committed an error in consequence of which income has escaped assessment, it is open to him to re-open the assessment. In our opinion, an error discovered on a re-consideration of the same material (and no more) does not give him that power."

(1) 102 I.T.R. 287.
(2) 119 I.T.R. 996.

Therefore, we proceed to appreciate the facts of the case in the light of the aforesaid observations.

(8) Adverting to the facts of the case, we find that the entire material was already with the Income Tax Officer when he framed assessment and re-assessment proceedings he only wanted to change his opinion. Merely change of opinion does not give jurisdiction to initiate re-assessment proceedings, and even if the order of the Income Tax Officer is erroneous, the remedy would lie elsewhere but not by initiating re-assessment proceedings. Accordingly, we are of the opinion that the Tribunal was justified in holding that the re-assessment proceedings for the assessment year 1972-73 were not validly reopened and we answer the referred question in favour of the assessee, in the affirmative.

(9) Now adverting to the other question referred for the assessment year 1974-75, we find that the Tribunal had the power to remand the case to the Income Tax Officer for fresh decision. The proceedings for this year were not reassessment but assessment proceedings. The crucial point would be to find out the nature of advance to the partners and then to frame assessment. No definite finding was given either by the Income Tax Officer or by the Appellate Assistant Commissioner, and, therefore, the Tribunal was right in remanding the case to the Income Tax Officer for fresh disposal. Accordingly, we answer the question referred for the assessment year 1974-75 in favour of the Revenue, in the affirmative.

(10) In view of the divided success, the parties are left to bear their own costs.

S.C.K.

Before : J. V. Gupta, J.

NEERU BALA AND OTHERS,—*Petitioners.*

versus

SMT. PUSHPINDER *ALIAS* BABLI,—*Respondents.*

Civil Revision No. 2595 of 1988

June 1, 1989.

Code of Civil Procedure (V of 1908)—O.1, Rl. 10—Wife's suit for grant of maintenance—Application by minors through their grandfather for being impleaded as party—Right of such minors to be impleaded—Application rejected.