SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices B. V. Nagarathna and Ujjal Bhuyan

Date of Decision: 23rd January 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8580-8582 OF 2011

WITH CIVIL APPEAL NOS. 8599-8603 OF 2011, CIVIL APPEAL NO. 8604 OF 2011, CIVIL APPEAL NOS. 8593-8598 OF 2011, CIVIL APPEAL NOS. 8583-8587 OF 2011, CIVIL APPEAL NOS. 8588-8592 OF 2011

M/S MANGALAM PUBLICATIONS, KOTTAYAM ...APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX, KOTTAYAM ...RESPONDENT(S)

Legislation:

Sections 139, 142, 143, 144, 145, 147, 148, 149, 151 of the Income Tax Act, 1961

Subject: Reassessment of income tax for the assessment years 1990-91, 1991-92, and 1992-93 - Validity of reassessment proceedings initiated under Section 147 of the Income Tax Act, 1961, following issuance of notice under Section 148.

Headnotes:

Income Tax Reassessment - Validity of Proceedings - Assessee's Failure to File Regular Balance Sheet and Profit and Loss Account for Assessment Years 1990-91, 1991-92, and 1992-93 - Discrepancy in Capital and Current Accounts - Assessee's Justification for Non-filing Based on Department's

Seizure of Documents - Assessment Officer's Relying on Balance Sheet Submitted for Loan to South Indian Bank - Tribunal's Order Setting Aside Reassessment Validated - High Court's Reversal Erroneous - Supreme Court Restores Tribunal's Order - Original Assessments Under Section 143(3) Not Based on False Declaration by Assessee - Reassessment Concluded as Mere Change of Opinion by Assessing Officer, Not Legally Permissible - No Valid Ground for Reassessment under Section 147 - Appeals Allowed [Paras 32-45].

Reassessment of Income – Validity and Limitations: Challenge against the High Court's order reversing the Tribunal's decision on the reassessment under Section 147 of the Income Tax Act, 1961 – Reassessment based on a comparison of the assessee's balance sheets – Issue of whether the reassessment was based on mere change of opinion or on tangible new evidence. [Para 1, 37-45]

Material Disclosure by Assessee – Obligation and Scope: Examination of the assessee's duty to disclose fully and truly all primary and relevant facts necessary for assessment – Evaluation of whether the assessee's disclosure met legal requirements in the absence of regular books of account due to seizure by the department. [Para 41, 43-44]

Validity of Returns in Absence of Regular Books of Account: Discussion on the validity of returns filed without regular books of account – Assessing officer's discretion in treating returns as defective and the impact of non-exercise of this discretion on the validity of the returns. [Para 43]

Assessing Officer's Jurisdiction for Reassessment: Exploration of the circumstances under which an assessing officer can reassess income – Analysis of whether the officer's belief of income escape was based on specific, reliable information or was a result of change in opinion. [Para 38, 42]

Decision: High Court's order setting aside the Tribunal's decision is reversed – Tribunal's findings that reassessment for the contested years was not

justified are restored, thereby allowing the appeals of the assessee and its partners. [Para 45-46]

Referred Cases:

- Calcutta Discount Company Limited Vs. Income Tax Officer, (1961) 41 ITR 1991
- Income Tax Officer Vs. Lakhmani Mewal Das, 1976 (3) SCC 757
- Phool Chand Bajrang Lal Vs. Income Tax Officer, (1993) 4 SCC 77
- Srikrishna Private Limited Vs. ITO, Calcutta, (1996) 9 SCC 534
- CIT, Delhi Vs. Kelvinator of India Limited, (2010) 2 SCC 723

J U D G M E N T

UJJAL BHUYAN, J.

The perennial question in income tax jurisprudence, whether reopening of a concluded assessment i.e. reassessment under Section 147 of the Income Tax Act, 1961 (briefly "the Act" hereinafter) following issuance of notice under Section 148 of the Act is legally sustainable or is bad in law, is again confronting us in the present batch of appeals. The Income Tax Appellate Tribunal, Cochin Bench, Cochin ('Tribunal' hereinafter) had decided in favour of the assessee by setting aside the orders of reassessment. However, the High Court of Kerala in appeals filed by the revenue under Section 260A of the Act has reversed the findings of the Tribunal by deciding the appeals preferred by the revenue in its favour.

2. Aggrieved by the aforesaid orders passed by the High Court of Kerala (briefly "the High Court" hereinafter), the assessee had preferred special leave petitions to appeal before this Court and on leave being granted, civil appeals have been registered.

3. We have heard Mr. Raghenth Basant, learned counsel for the appellant/assessee (which would be referred to either as the appellant or as the assessee) and Mr. Shyam Gopal, learned counsel for the

respondent/revenue (again, would be referred to either as the respondent or as the revenue).

4. A brief narration of facts is necessary.

5. For the sake of convenience, we may refer to civil appeal Nos. 8580, 8581 and 8582 of 2011 (M/s Mangalam Publications, Kottayam Vs. Commissioner of Income Tax, Kottayam).

6. The above three civil appeals pertain to assessment years 1990-91, 1991-92 and 1992-93.

7. The assessee was a partnership firm at the relevant point of time though it got itself registered as a company since the assessment year 1994-95. The assessee is carrying on the business of publishing newspaper, weeklies and other periodicals in several languages under the brand name “Mangalam”. Prior to the assessment year 1994-95 including the assessment years under consideration, the status of the assessee was that of a firm, being regularly assessed to income tax.

8. For the assessment year 1990-91, assessee filed return of income on 22.10.1991 showing loss of Rs.5,99,390.00. Subsequently, the assessee filed a revised computation showing income at Rs.5,63,920.00. Assessee did not file any balance sheet alongwith the return of income on the ground that books of account were seized by the income tax department (department) in the course of search and seizure operations on 03.12.1995 and that those books of account were not yet returned. In the assessment proceedings, the assessing officer did not accept the contention of the assessee and made an analysis of the incomings and outgoings of the assessee for the previous year under consideration. After considering various heads of income and sale of publications, the assessing officer made a lumpsum addition of Rs. 1 lakh to the disclosed income vide the assessment order dated 29.01.1992 passed under Section 143 (3) of the Act.

9. Likewise, for the assessment year 1991-1992, the assessee did not file any balance sheet along with the return of income for the same reason mentioned for the assessment year 1990-1991. The return of income was filed on 22.10.1991 showing a loss of Rs.21,66,760.00. As per the revised profit and loss account, the sale proceeds of the publications were shown at Rs.8,21,24,873.00. Assessing officer scrutinised the net sale proceeds as per the Audit Bureau of Circulation figure and the certified Performance

Audit Report. On that basis assessing officer accepted the sale proceeds of Rs.8,21,24,873.00 as correct being in conformity with the facts and figures available in the Audit Bureau of Circulation report and the Performance Audit Report. After considering the incomings and outgoings of the relevant previous year assessing officer reworked the aforesaid figures but found that there was a deficiency of Rs.29,17,931.00 in the incoming and outgoing statement which the assessee could not explain. Accordingly, this amount was added to the total income of the assessee. Further, the assessee could not produce proper vouchers in respect of a number of items of expenditure. Accordingly, an addition of Rs.1,50,000.00 was made to the total income of the assessee vide the assessment order dated 29.01.2022 passed under Section 143 (3) of the Act.

10. For the assessment year 1992-1993 also, the assessee filed the return of income on 07.12.1992 showing a loss of Rs.10,50,000.00. However, a revised return was filed subsequently on 28.01.1993 showing loss of Rs.44,75,212.00. Like the earlier years, assessee did not maintain books of account and did not file the balance sheet for the same reason. However, the assessee disclosed total sale proceeds of the weeklies at Rs.7,16,95,530.00 and also advertisement receipts to the extent of Rs.40 lakhs. The profit was estimated at Rs.41,63,500.00 before allowing depreciation.

0.1. On scrutiny of the performance certificate issued by the Audit Bureau of Circulation, the assessing officer observed that total sale proceeds of the weeklies after allowing sale commission came to Rs.7,22,94,757.00. Following the profit percentage adopted in earlier years, the assessing officer estimated the income from the weeklies and other periodicals at 7.50% before depreciation, adding the estimated advertisement receipts of Rs.40 lakhs to the total sale receipts of Rs.7,22,94,757.00. The assessing officer held that the total receipt from sale of weeklies and periodicals came to Rs.7,62,94,757.00. The profit earned before depreciation at the rate of 7.50% on the turnover came to Rs.57,22,106.00. In respect of the daily newspaper, the assessing officer worked out the loss at Rs.22,95,872.00 as against the loss of Rs.41,23,500.00 claimed by the assessee. Taking an overall view of the matter, the assessing officer estimated the business income of the assessee during the assessment year 1992-1993 at Rs.10,00,000.00 vide the assessment order dated 26.03.1993 passed under Section 143(3) of the Act.

11. It may be mentioned that for the assessment year 19931994, the assessee had submitted the profit and loss account as well as the balance sheet along with the return of income. While examining the balance sheet, the assessing officer noticed that the balance in the capital account of all the partners of the assessee firm together was Rs.1,85,75,455.00 as on 31.03.1993 whereas the capital of the partners as on 31.12.1985 was only Rs.2,55,117.00. According to the assessing officer, none of the partners had any other source of income apart from one of the partners, Smt. Cleramma Vargese, who had a business under the name and style of "Mangalam Finance". As the income assessed for all the years was found to be not commensurate with the increase in the capital by Rs.1,83,20,338.00 (Rs.1,85,75,455.00 – Rs.2,55,117.00) from 1985 to 1993, it was considered necessary to reassess the income of the assessee as well as that of the partners for the assessment years 1988-1989 to 1993-1994. After obtaining the approval of the Commissioner of Income Tax, Trivandrum, notice under Section 148 of the Act was issued and served upon the assessee on 29.03.2000.

12. In respect of the assessment year 1990-1991, the assessee informed the assessing officer that the return of income filed which culminated in the assessment order dated 29.01.1992 may be considered as the return in the reassessment proceedings. The assessing officer took cognizance of the profit and loss account and the balance sheet filed by the assessee before the South Indian Bank on the basis of which assessment of income for the assessment years 1988 - 1989 and 1989 - 1990 were completed. Objection of the assessee that the aforesaid balance sheet was prepared only for the purpose of obtaining loan from the South Indian Bank and therefore could not be relied upon for income tax assessment was brushed aside. The reassessment was made on the basis of the accounts submitted to the South Indian Bank. By the reassessment order dated 21.03.2002 passed under Section 144/147 of the Act, the assessing officer quantified the total income of the assessee at Rs.29,66,910.00 whereafter order was passed allocating income among the partners.

13. Likewise, for the assessment year 1991-1992, the assessing officer passed reassessment order dated 21.03.2002 under Section 144/147 of the Act determining total income at Rs.13,91,700.00. Following the same, allocation of income was also made amongst the partners.

14. In so far assessment year 1992-1993 is concerned, the assessing officer passed the reassessment order also on 21.03.2002 under Section 144/147

of the Act determining the total income of the assessee at Rs.25,06,660.00. Thereafter allocation of income was made amongst the partners in the manner indicated in the order of reassessment.

15. At this stage, we may mention that the assessing officer had worked out the escaped income for the three assessment years of 199091, 1991-92 and 1992-93 at Rs.50,96,041.00. This amount was further apportioned between the three assessment years in proportion to the sales declared by the assessee in the aforesaid assessment years as under:

Sr. No.	Assessment year	Amount
1.	1990-91	Rs.19,05,476.00
2.	1991-92	Rs.16,83,910.00
3.	1992-93	Rs.15,06,655.00
	Total	Rs.50,96,041.00 rounded off to Rs.50,96,040.00

16. Against the aforesaid three reassessment orders for the assessment years 1990-91, 1991-92 and 1992-93, assessee preferred three appeals before the first appellate authority i.e. Commissioner of Income Tax (Appeals), IV Cochin (briefly “the CIT(A)” hereinafter). Assessee raised the ground that it had disclosed all material facts necessary for completing the assessments. The assessments having been completed under Section 143(3) of the Act, the assessments could not have been reopened after expiry of four years from the end of the relevant assessment year as per the proviso to Section 147 of the Act. It was pointed out that the limitation period for the last of the three assessment years i.e. 1992-93, had expired on 31.03.1997 whereas the notices under Section 148 of the Act were issued and served on the assessee only on 29.03.2000. Therefore, all the three reassessment proceedings were barred by limitation. The assessee also argued that the alleged income escaping assessment could not be computed on an estimate basis. In the present case, the assessing officer had allocated the alleged escaped income for the three assessment years in proportion to the corresponding sales turnover. It was further argued that as per Section 282(2), notice under Section 148 of the Act in the case of a partnership firm was required to be made to a member of the firm. In the present case, the

notices were issued to the partnership firm. Therefore, such notices could not be treated as valid.

6.1. CIT(A) rejected all the above contentions urged by the assessee. CIT(A) relied on Section 139(9)(f) of the Act and thereafter held that the assessee had not furnished the details as per the aforesaid provisions and therefore fell short of the requirements specified therein. Vide the common appellate order dated 26.02.2004, CIT(A) held that, as the assessee had failed to disclose all material facts necessary to make assessments, therefore it could not be said that the reassessment proceedings were barred by limitation in terms of the proviso to Section 147. The other two grounds raised by the assessee were also repelled by the first appellate authority. Thereafter, CIT(A) made a detailed examination of the factual aspect whereafter it proposed enhancement of the quantum of escaped income. Following the same, CIT(A) enhanced the assessment by fixing the unexplained income at Rs.1,44,02,560.00 for the assessment years 1987-88 to 1993-94 which was thereafter apportioned in respect of the relevant three assessment years. The pro-rata allotment of escaped income for the three assessment years as directed by CIT(A) are as follows:

Sr. No.	Assessment year	Escaped income
1.	1990-91	Rs.24,98,755.00
2.	1991-92	Rs.23,01,204.00
3.	1992-93	Rs.20,20,895.00
	Total	Rs.68,20,854.00

6.2. Thus, as against the total escaped income of Rs.50,96,040.00 for the above three assessment years as quantified by the assessing officer, CIT(A) enhanced and redetermined such income at Rs.68,20,854.00.

6.3. However, it would be relevant to mention that CIT(A) in the appellate order had noted that the assessee had filed its balance sheet as on 31.12.1985 while filing the return of income for the assessment year 1986-87. The next balance sheet was filed as on 31.03.1993. No balance sheet was filed in

the *interregnum* on the ground that it could not maintain proper books of accounts as the relevant materials were seized by the department in the course of a search and seizure operation and not yet returned. CIT(A) further noted that the assessing officer had taken the balance sheet as on 31.03.1989 filed by the assessee before the South Indian Bank as the base for reconciling the accounts of the partners. It was noticed that CIT(A) in an earlier appellate order dated 26.03.2002 for the assessment year 1989-90 in the assessee's own case had held that the profit and loss account and the balance sheet furnished to the South Indian Bank were not reliable. CIT(A) in the present proceedings agreed with such finding of his predecessor and held that the unexplained portion, if any, of the increase in capital and current account balance with the assessee had to be analysed on the basis of the balance sheet filed before the assessing officer as on 31.12.1985 and as on 31.03.1993.

17. Aggrieved by the common appellate order passed by the CIT(A) dated 26.02.2004, assessee preferred three separate appeals before the Tribunal which were registered as under:

(i) ITA No. 282(Coch)/2004 for the assessment year 1990-91. (ii) ITA No. 283(Coch)/2004 for the assessment year 1991-92.

(iii) ITA No. 284(Coch)/2004 for the assessment year 1992-93.

7.1. In the three appeals filed by the assessee, revenue also filed cross objections.

7.2. By the common order dated 29.10.2004, the Tribunal allowed the appeals filed by the assessee and set aside the orders of reassessment for the three assessment years as affirmed and enhanced by the CIT(A). Tribunal held that the re-examination carried out by the assessing officer was not based on any fresh material or evidence. The reassessment orders could not be sustained on the basis of the balance sheet filed by the assessee before the South Indian Bank because in an earlier appeal of the assessee itself, CIT(A) had held that such balance sheet and profit and loss account furnished to the bank were not reliable. The original assessments were completed under Section 143(3) of the Act. Therefore, it was not possible to hold that the assessee had not furnished necessary details for completing the assessments at the time of original assessment. In such circumstances, Tribunal held that the case of the assessee squarely fell

within the four corners of the proviso to Section 147. Consequently, the reassessments were held to be barred by limitation, thus without jurisdiction. While allowing the appeals of the assessee, Tribunal dismissed the cross objections filed by the revenue.

18. Against the aforesaid common order of the Tribunal, the respondent preferred three appeals before the High Court under Section 260A of the Act, being IT Appeal Nos. 400, 557 and 558 of 2009 for the assessment years 1990-91, 1991-92 and 1992-93 respectively. All the three appeals were allowed by the High Court vide the common order dated 12.10.2009. According to the High Court, the finding of the Tribunal that the assessee had disclosed fully and truly all material facts necessary for completion of the original assessments was not tenable. Holding that there was no material before the Tribunal to come to the conclusion that the assessee had disclosed fully and truly all material facts required for completion of original assessments, the High Court set aside the order of the Tribunal and remanded the appeals back to the Tribunal to consider the appeals on merit after issuing notice to the parties.

19. It is against this order that the assessee had filed the special leave petitions which on leave being granted have been registered as civil appeals. The related civil appeals have been filed by the partners of the assessee firm which would be dependent on the outcome of the present set of civil appeals.

20. Respondent has filed counter affidavit supporting the judgment under appeal. It is contended that the High Court has correctly appreciated the facts and the law and thereafter given a reasoned order as to why the reopening of assessment is valid. High Court has correctly held that the assessee had not disclosed fully and truly all the material facts necessary for completion of the assessments. Adverting to Section 139 (9) of the Act, it is submitted that, it is not mandatory for the assessing officer to treat a return as invalid even if the return is defective under any of the sub-clauses of Section 139 (9). It is the discretion of the assessing officer to issue notice. Since no notice was issued, the return and the assessment made thereon would be valid.

0.1. It is submitted that the assessee had not even had accounts pertaining to the advertisement receipts which is a major source of income of a

publication entity; as a matter of fact, the assessee had shown the income from advertisements on estimation basis.

0.2. Though the assessee had been claiming that it did not maintain any books of account from the assessment years 1989- 1990 onwards, an audited balance sheet and profit and loss account submitted to the South Indian Bank were traced out and used as evidence against the assessee for reopening the assessment for the assessment year 1989- 1990. In the first appellate proceedings, CIT(A) took the view that the profit shown in the statement was for availing credit facility only and therefore set aside the reopening of assessment. Though the Tribunal concurred with the view of CIT(A), the department filed an appeal before the High Court. The assessing officer had compared the balance of the partners in their capital account in the firm in the said balance sheet (filed before the bank) with capital in the balance sheet filed for the assessment year 1993 – 1994 and thereafter determined the probable escapement of income which is fully justified and rightly upheld by the High Court.

0.3. Respondent has contended that in the original assessments the assessing officer had made the assessments on the basis of limited information furnished by the assessee. The assessing officer made the reassessments on the basis of the increase in the capital in the balance sheets between the years ending 31.03.1989 and 31.03.1993. Respondent has denied that the reassessments were made on the basis of change of opinion. An audited balance sheet for the period ending 31.12.1984 was available with the department. Thereafter, no audited or unaudited balance sheets were furnished on the ground that books of account could not be maintained. However, an audited balance sheet for the period ending 31.03.1993 was furnished in the course of the assessment proceedings for the assessment year 1993 – 1994. Another balance sheet for the period ending 31.03.1989 which was claimed by the assessee to be an account prepared only for submission before the South Indian Bank for availing loan could be traced out. A perusal of the balance sheet for the assessment year 19931994 revealed that the increase in capital was not commensurate with the income assessed on estimation basis by the assessing officer for the assessment years 1989 – 1990 to 1992-1993. It was in view of such changed circumstances that notices under Section 148 were issued. The original assessments for the assessment years 1990 – 1991, 1991 – 1992 and 1992 – 1993 were completed on 29.01.1992, 29.01.1992 and 26.03.1993 respectively. The balance sheet for the assessment year 1993

– 1994 which was used as the basis for reassessment was not available with the assessing officer when the original assessments were made. Facts available with the assessing officer in the original assessments and in the reassessments were different. Since facts were different, question of any change in the opinion did not arise. In the circumstances respondent sought for dismissal of the special leave petitions since registered as civil appeals.

21. Mr. Raghenth Basant, learned counsel for the appellant at the outset submits that the High Court fell in error while setting aside the well-reasoned and correct order of the Tribunal. Order of the High Court should be set aside and the order of the Tribunal restored.

1.1. He submits that the appellant is a partnership firm engaged in the business of publication of newspaper, weeklies and other periodicals under the brand name “Mangalam”. Being an assessee under the Act it was maintaining proper books of accounts and had filed profit and loss accounts as well as balance sheets along with the returns of income till the assessment year 1985 – 1986. A search operation was carried out by officials of the department under Section 132 of the Act in the business premises of the appellant on 31.12.1985. In the said search operation, books of account, registers and ledgers of the appellant were seized. Because of the aforesaid, the appellant was unable to maintain proper books of account as it was not possible for it to obtain ledger balances to be brought down for the succeeding accounting years. Nonetheless, appellant maintained primary books of account and used to prepare profit and loss accounts. It also used to prepare a statement of source and application of funds in support of the income returned by it in the returns of income. Being a member of the Audit Bureau of Circulation, appellant was also required to maintain exhaustive details regarding printing and sale of newspaper and other periodicals published by it.

1.2. Learned counsel submits that returns were filed by the appellant for the three assessment years in question. Those returns were supported by profit and loss accounts and statements showing the source and application of funds. Assessments for the three assessment years were carried out and completed under Section 143 (3) of the Act after making additions and providing for certain disallowances. He submits that for the assessment year 1993–1994, the appellant had maintained complete set of books of account, audited profit and loss account and balance sheet

which were duly filed before the assessing officer. Following assessment proceedings, assessing officer passed the assessment order for the assessment year 1993 – 1994 on 27.01.1994 under Section 143 (3) of the Act.

1.3. More than eight to ten years after expiry of the relevant assessment years, appellant was served with notices dated 29.03.2000 issued under Section 148 of the Act for the assessment years 1990 – 1991, 1991 – 1992 and 1992 – 1993. He submits that the basis for reassessment was purportedly comparison of the current and capital accounts of the partners of the assessee firm in the balance sheet filed along with the return for the assessment year 1993 – 1994 with the capital and current accounts of the partners as on 31.12.1985, which showed unexplained increase. The revenue also sought to rely upon the balance sheet for the assessment year 1988 – 1989 obtained by the assessing officer from the South Indian Bank which was submitted by the assessee to the said bank to avail credit facility. He submits that on such comparison the assessing officer came to an erroneous conclusion that the profits for the assessment years 1990 – 1991, 1991 – 1992 and 1992 -1993 would be Rs.1,86,57,246.00 and as the assessment for the said years came to Rs.16,64,518.00 only, there was an under assessment of income to the tune of Rs.1,69,92,728.00.

1.4. Learned counsel submits that during the reassessment proceedings assessee sought for return of the books seized by the department. Though some books were returned, the entire seized materials were not returned. As it was an old matter assessee had sought for time to look into the old records and to consult its representative. However, the assessing officer declined to grant time and went ahead and passed the reassessment orders *ex parte* under Section 144/147 of the Act. He submits that the assessing officer made the reassessment on a comparison of the increase in the capital and current accounts of the partners for the period from 1986 to 1993. According to him, the assessing officer could not have done that because the balance sheet for the assessment year 1989 – 1990, which was obtained by the assessing officer from the South Indian Bank, was not prepared on actual and current accounts; that was prepared on provisional and estimate basis in the absence of the account books which were seized by the department, that too, only for the purpose of obtaining credit facilities from the bank.

1.5. It is the submission of learned counsel for the assessee that the High Court has erred in holding that even in the absence of the entire books of

accounts, the assessee had not furnished the documents and particulars required under Section 139 (9) (f) of the Act. According to the High Court since the original assessment was completed without the books of account and the details under Section 139 (9) (f) being furnished, therefore, the assessee had not disclosed fully and truly all material facts necessary for completion of assessment. Learned counsel submits that for non-furnishing of particulars under Section 139 (9) (f) the original assessment would be rendered invalid. However, the assessing officer did not adopt the aforesaid course of action but instead proceeded to complete the assessments under Section 143 (3) of the Act. In the circumstances, he submits that non furnishing of details under Section 139 (9) (f) cannot lead to any inference that material facts had not been disclosed so as to justify reopening of assessments that too eight to ten years after expiry of the relevant assessment years.

1.6. Learned counsel asserts that even though the assessee was not maintaining regular books of accounts, all relevant details necessary for making the assessments were furnished before the assessing officer. These included detailed cash flow statements, profit and loss accounts, statements showing the source and application of funds reflecting the increase in the capital and current accounts of the partners of the assessee firm etc. It was thereafter that assessments were completed not only in respect of the assessee for the above three assessment years but also for the partners as well under Section 143(3) of the Act.

1.7. It is contended by learned counsel for the assessee that there was no specific information before the assessing officer wherefrom he could form a reason to believe that income exigible to income tax had escaped assessment for the three assessment years. The only reason for initiating reassessment proceedings was the impression of the assessing officer that there was an increase in the capital and current accounts of the partners upon a comparison of the balance sheets for the assessment year 1985 – 1986 and for the assessment year 1993 – 1994 which could not be properly explained. The assessing officer also formed the above belief on the basis of the balance sheet for the assessment year 1989 – 1990 which was obtained from the South Indian Bank. According to him, on both counts, the revenue could not have initiated proceedings for reopening of concluded assessments that too under Section 143 (3) of the Act. He submits that CIT(A), in the appeal of the assessee for the assessment year 1989 -1990, had clearly held that such a balance sheet submitted before the bank was

not reliable. Learned counsel asserts that an assessing officer would get the jurisdiction to reopen an assessment only on the basis of specific, reliable and relevant information coming to his possession subsequent to the original assessment and not otherwise. In support of such submission learned counsel has relied upon the decisions of this Court in:

(i) M/s Phool Chand Bajrang Lal Vs. Income Tax Officer, (1993) 4 SCC 77.

(ii) Srikrishna Private Limited Vs. ITO, Calcutta, (1996) 9 SCC 534.

1.8. Summing up his submissions, learned counsel submits that as rightly held by the Tribunal, it was the change of view of the assessing officer upon assessing the comparative accounts of the partners which led to the reassessments which is not based on any fresh material or evidence. It is evident that the assessing officer had only reviewed the original assessments on the basis of a fresh application of mind to the same set of facts. Therefore, it is a clear case of change of opinion leading to reassessment proceedings which is not permissible in law as held by this Court in *CIT, Delhi Vs. Kelvinator of India Limited, (2010) 2 SCC 723.* He therefore submits that the order of the High Court is liable to be set aside and that of the Tribunal restored.

22. Mr. Shyam Gopal, learned counsel for the respondent at the outset submits that there is no merit at all in the civil appeals, and therefore, the civil appeals should be dismissed.

2.1. Adverting to Section 145 (1) of the Act, he submits that income from the profits of business shall be computed in accordance with the cash or mercantile or any other system of accounting regularly employed by the assessee. Since the business income had to be computed by following the method of accounting adopted by the assessee and based on the books of accounts so maintained, the assessee was required to produce the books of accounts but when the books of accounts were not available, at least to furnish the particulars in terms of Section 139 (9) (f) of the Act.

2.2. Referring to Section 139 (9) (f) of the Act, he submits that even in the absence of regular books of accounts, the assessee is bound to provide the information required under the aforesaid provision. An assessee who does not disclose the above information and instead submits returns on

estimation basis cannot claim that it has fully and truly disclosed all material facts required for assessment.

2.3. According to Mr. Gopal, Tribunal erred in holding that the assessee had disclosed fully and truly all material facts necessary for assessment. In fact, Tribunal did not go into the merit of the case. Rather, Tribunal held that there were no materials before the assessing officer to take the view that income chargeable to tax had escaped assessment.

2.4. Learned counsel for the revenue strenuously argued that assessing officer had made a comparative analysis of the two balance sheets, one as on 31.12.1985 relevant to the assessment year 19861987 and the balance sheet dated 31.03.1994 relevant to the assessment year 1994–1995 and found therefrom unexplained increase in the capital and current accounts of the partners. That apart, the assessing officer also obtained a balance sheet for the assessment year 1988–1989 from the South Indian Bank which also indicated unexplained profits and gains of the partners. It was thereafter that reassessment proceedings were initiated. First appellate authority i.e. CIT(A) not only affirmed the reassessment orders of the assessing officer but also enhanced the quantum of escaped income which was restored by the High Court after setting aside the reversal order of the Tribunal.

2.5. Learned counsel for the respondent has submitted a convenience compilation and drew the attention of the Court therefrom to the relevant provisions of the Act i.e. Section 139 (9), 143, 144, 145, 147, 148, 149 and 151 of the Act, both pre 01.04.1989 and post 01.04.1989. He submits that there was admittedly non-disclosure of material facts by the assessee, and, therefore, the extended period under the proviso to Section 147 of the Act was available to the department. Viewed in the above context, the notices issued under Section 148 of the Act as well as the orders of reassessment passed under Section 144/147 of the Act were within limitation.

2.6. Learned counsel has specifically referred to Section 149 of the Act which deals with the time limit for issuance of notice under Section 148 of the Act. Post amendment with effect from 01.04.1989, he submits that under Section 149 (1) (b) (iii), the limitation is, if seven years but not more than ten years had elapsed from the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year. In the instant case, the quantum of escaped assessment is admittedly in excess of

rupees fifty thousand. Therefore, the notices issued under Section 148 of the Act on 29.03.2000 for the three assessment years of 1990 – 1991, 1991 – 1992 and 1992 – 1993 were well within the limitation period.

22.7. Learned counsel has referred to the decision of this Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, (1961) 41 ITR 1991* and submits that the duty of disclosing all the primary facts relevant to assessment before the assessing authority lies on the assessee. Only when all the primary facts are disclosed, the burden would shift to the assessing authority.

22.8. Asserting that the order of the High Court is fully justified, learned counsel seeks dismissal of the civil appeals.

23. Submissions made by learned counsel for the parties have received the due consideration of the Court.

24. At the outset, we may advert to certain provisions of the Act as existed at the relevant point of time having a bearing on the present *lis*. Chapter XIV of the Act comprising Sections 139 to 158 deals with procedure for assessment. Section 139 mandates filing of income tax return. At the relevant point of time, this provision provided that every person, if his total income or the total income of any other person in respect of whom he was assessable under the Act during the previous year had exceeded the maximum amount which is not chargeable to income tax, he shall on or before the due date furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner, setting forth such other particulars as may be prescribed.

24.1. Since reference was made to sub-section (9)(f) of Section 139, both in the pleadings and in the oral hearing, we may mention that under sub-section (9) of Section 139, where the assessing officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period, the assessing officer may in his discretion allow. If the defect is not rectified within the specified period or within the further period as may be allowed, the return shall be treated as an invalid return. In such an eventuality, it would be construed that the assessee had failed to furnish the return. There is an Explanation below sub-section (9) which clarifies

that a return of income shall be regarded as defective unless all the conditions mentioned thereunder are fulfilled. Clause (f) says that where regular books of account are not maintained by the assessee but the return is accompanied by a statement indicating the amounts of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed and also disclosing the amounts of total sundry debtors, sundry creditors, stock in trade and cash balance as at the end of the previous year, such a return shall not be treated as defective.

24.2. Thus, Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the relevant previous year had exceeded the maximum amount which is not chargeable to income tax. Under sub-section (9), if there are defects in the return which are not rectified within the stipulated period after being intimated by the assessing officer, the return of income would be treated as an invalid return. Of course, it would not be treated as defective and consequently invalid if in a case, such as, under clause (f) where regular books of account are not maintained but the return of income is accompanied by a statement indicating the amounts of turnover etc.

25. Section 142 deals with enquiry before assessment. As per sub-section (1), the assessing officer may issue notice upon an assessee who has made a return seeking details of such accounts, information or documents etc. which may be necessary for the purpose of making an assessment. Sub-section (2) empowers the assessing officer to make such enquiry as he considers necessary for obtaining full information and sub-section (3) requires the assessing officer to provide an opportunity of hearing to the assessee in respect of any material gathered on the basis of the enquiry.

26. This takes us to Section 143 which is the provision for assessment. As per sub-section (1), where a return is made under Section 139 or in response to a notice under Section 142(1), the assessing officer may carry out adjustments in accordance with law and thereafter, issue intimation to the assessee specifying the sums payable. Such intimation shall be deemed to be a notice of demand under Section 156 of the Act.

26.1. Sub-section (2) provides that where a return has been furnished under Section 139 or in response to a notice under subsection (1) of Section 142, to ensure that the assessee has not understated the income

or has not computed excessive loss or has not underpaid the tax in any manner, the assessing officer shall serve on the assessee a notice to produce evidence in support of the claim made by the assessee.

26.2. As per sub-section (3) of Section 143, after hearing such evidence as the assessee may produce and such other evidence as the assessing officer may require on specified points and after taking into account all relevant material which he has gathered, the assessing officer shall make an assessment of the total income or loss of the assessee by an order in writing. In the said exercise, he shall determine the sum payable by the assessee or refund of any amount due to him on the basis of such assessment.

27. Section 144 provides for best judgment assessment. It says that if any person fails to submit a return under sub-section (1) of Section 139 or fails to comply with the terms of a notice under subsection (1) of Section 142 or having made a return fails to comply with all the terms of a notice issued under sub-section (2) of Section 143, the assessing officer after taking into account all relevant materials and after giving the assessee an opportunity of being heard make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

28. This brings us to the pivotal section i.e. Section 147. Prior to the Direct Tax Laws (Amendment) Act, 1987, Section 147 read as under:

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).

28.1. This provision was amended by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989. Post such amendment, Section 147 read as under:

147. *Income escaping assessment*.—If the assessing officer, *for reasons to be recorded* by him in writing, is of the *opinion* 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).

28.2. As can be seen from the above, prior to 01.04.1989, the income tax officer was required to have 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 or to disclose fully and truly all material facts necessary for such assessment, income chargeable to tax had escaped assessment for that assessment year or the income tax officer had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year, the income tax officer could reopen an assessment. But with effect from 01.04.1989, the requirement of law underwent a change. It was sufficient if the assessing officer for reasons to be recorded by him in writing was of the opinion that any income chargeable to tax had escaped assessment for any assessment year, he could assess or reassess such

income chargeable to tax which had escaped assessment and which came to his notice subsequently.

Therefore, post 01.04.1989, the power to reopen an assessment became much wider.

28.3. It appears that a number of representations were received against the omission of the words "reason to believe" from Section 147 and their substitution by the word "opinion" of the assessing officer. It was pointed out by the representationists that the meaning of the expression "reason to believe" was explained in a number of judgments and was well settled. Omission of such an expression from Section 147 would give arbitrary powers to the assessing officer to reopen past assessments. To allay such apprehensions, Parliament enacted the Direct Tax Laws (Amendment) Act, 1989 again amending Section 147 by re-introducing the expression "reason to believe". Section 147 after the amendment carried out by the Direct Tax Laws (Amendment) Act, 1989 reads as under:

> 147. *Income escaping assessment*.—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).

28.4. Thus, Section 147 as it stood at the relevant point of time provides that if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or re-assess such income and such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under Section 147.

29. Section 148 says that before making an assessment, re-assessment etc. under Section 147, the assessing officer is required to issue and serve a notice on the assessee calling upon the assessee to file a return of his

income in the prescribed form etc., setting forth such particulars as may be called upon.

30. Such a notice is subject to the time limit prescribed under Section 149. Under sub-Section (1)(b), no notice under Section 148 shall be issued in a case where an assessment under sub-section (3) of Section 143 or Section 147 has been made for such assessment year if seven years but not more than 10 years have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 50,000 or more for that year.

31. At this stage, we deem it necessary to expound on the meaning of disclosure. As per the P. Ramanatha Aiyar, Advanced Law Lexicon, Volume 2, Edition 6, 'to disclose' is to expose to view or knowledge, anything which before was secret, hidden or concealed. The word 'disclosure' means to disclose, reveal, unravel or bring to notice, *vide CIT Vs. Bimal Kumar Damani, (2003) 261 ITR 87 (Cal)*. The word 'true' qualifies a fact or averment as correct, exact, actual, genuine or honest. The word 'full' means complete. True disclosure of concealed income must relate to the assessee concerned. Full disclosure, in the context of financial documents, means that all material or significant information should be disclosed. Therefore, the meaning of 'full and true disclosure' is the voluntary filing of a return of income that the assessee earnestly believes to be true. Production of books of accounts or other material evidence that could ordinarily be discovered by the assessing officer does not amount to a true and full disclosure.

32. Let us now discuss some of the judgments cited at the bar. First and foremost is the decision of a constitution bench of this Court in *Calcutta Discount Company Limited* (supra). That was a case under Section 34 of the Indian Income Tax Act, 1922 which is in *pari-materia* to Section 147 of the Act. The constitution bench explained the purport of Section 34 of the Indian Income Tax Act, 1922 and highlighted two conditions which would have to be satisfied before issuing a notice to reopen an assessment beyond four years but within eight years (as was the then limitation). The first condition was that the income tax officer must have reason to believe that income, profits or gains chargeable to income tax had been under-assessed. The second condition was that he must have also reason to believe that such under-assessment had occurred by reason of either (i) omission or failure on the part of the assessee to make a return of his

income under Section 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. It was emphasized that both these were conditions precedent to be satisfied before the income tax officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond the period of four years but within the period of eight years from the end of the year in question. The words used in the expression "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" would postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment though what facts are material and necessary for assessment would differ from case to case. On the above basis, this Court came to the conclusion that while the duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this. This position has been reiterated in subsequent decisions by this Court including in *Income Tax Officer Vs. Lakhmani Mewal Das*, 1976 (3) SCC 757; 1976 (103) ITR 437. The expression "reason to believe" has also been explained to mean reasons deducible from the materials on record and which have a live link to the formation of the belief that income chargeable to tax has escaped assessment. Such reasons must be based on material and specific information obtained subsequently and not on the basis of surmises, conjectures or gossip. The reasons formed must be *bona fide*.

33. In *Phool Chand Bajrang Lal* (supra), this Court examined the purport of Section 147 of the Act and observed that the object of Section 147 is to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". This Court opined that it would be a travesty of justice to allow an assessee such latitude. After adverting to various previous decisions, this Court held that an income tax officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Act only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that due to omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. In the above context, Supreme Court has held as under:

25. ……He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment.…….

34. This Court in the case of *Srikrishna Private Limited* (supra) emphasized that what is required of an assessee in the course of assessment proceedings is a full and true disclosure of all material facts necessary for making assessment for that year. It was emphasized that it is the obligation of the assessee to disclose the material facts or what are called primary

facts. It is not a mere disclosure but a disclosure which is full and true. Referring to the decision in *Phool Chand Bajrang Lal* (supra), it has been highlighted that a false disclosure is not a true disclosure and would not satisfy the requirement of making a full and true disclosure. The obligation of the assessee to disclose the primary facts necessary for his assessment fully and truly can neither be ignored nor watered down. All the requirements stipulated by Section 147 must be given due and equal weight.

35. *Kelvinator of India Limited* (supra) is a case where this Court examined the question as to whether the concept of "change of opinion" stands obliterated with effect from 01.04.1989 i.e. after substitution of Section 147 of the Act by the Direct Tax Laws (Amendment) Act, 1987. This Court considered the changes made in Section 147 and found that prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under two conditions i.e., (a) the Income Tax Officer had reason to believe that by reason of omission or failure on the part of the assessee to make a return under Section 139 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or (b) notwithstanding that there was no such omission or failure on the part of the assessee, the Income Tax Officer had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year. Fulfilment of the above two conditions alone conferred jurisdiction on the assessing officer to make a re-assessment. But with effect from 01.04.1989, the above two conditions have been given a goby in Section 147 and only one condition has remained, viz, that where the assessing officer has reason to believe that income has escaped assessment, that would be enough to confer jurisdiction on the assessing officer to reopen the assessment. Therefore, post 01.04.1989, power to reopen assessment is much wider. However, this Court cautioned that one needs to give a schematic interpretation to the words "reason to believe", otherwise Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be *per se* reason to reopen.

35.1. This Court also referred to Circular No.549 dated 31.10.1989 of the Central Board of Direct Taxes (CBDT) to allay the apprehension that omission of the expression "reason to believe" from Section 147 and its substitution by the word "opinion" would give arbitrary powers to the

assessing officer to reopen past assessments on mere change of opinion and pointed out that in 1989 Section 147 was once again amended to reintroduce the expression “has reason to believe” in place of the expression “for reasons to be recorded by him in writing, is of the opinion”. This Court thereafter explained as under:

> 6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.
>
> 7. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the assessing officer. Hence, after 14-1989, the assessing officer has power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words “reason to believe” but also inserted the word “opinion” in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words “reason to believe”, Parliament reintroduced the said expression and deleted the word “opinion” on the ground that it would vest arbitrary powers in the assessing officer.

36. Elaborating further on the expression “change of opinion”, this Court in *Techspan India Private Limited (supra)* observed that to check whether it is a case of change of opinion or not one would have to see its meaning in literal as well as legal terms. The expression “change of opinion” would imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by the assessing officer resulting from what he thinks on a particular question. Therefore,

before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change of opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings.

37. Learned counsel for the respondent has placed before the Court in the convenience compilation the reasons recorded by the assessing officer for initiating reassessment proceedings. The same is extracted as under:

Reasons for the belief that income has escaped assessment.

As per the last balance sheet of the assessee for AY 1989-90 obtained from the South Indian Bank, the capital of the assessee is as under:-

Fixed capital of partners.	Rs. 20,50,000/-
Investment allowance.	Rs.41,47,873/-
Current a/c of partners.	Rs. 44,28,597/-
Total	Rs. 1,06,26,470/-

The B/S/P & L a/c for the intervening period is not available. But the balance sheet/P&L a/c for AY 199394 shows increase in capital which is as under:

Fixed capital of partners.	Rs. 20,50,000/-
Investment allowance.	Rs. 40,02,614/-
Current a/c of partners.	Rs. 1,65,25,455/-
Total	Rs. 2,25,78,069/-

The difference of Rs. 1,19,51,599/- is obviously the profit of the assessee during the AY 1990-91 to 199394. The profit of AY 1993-94 as per the accounts is Rs. 5,08,548/-. If this is excluded, the profit for the three years i.e. 1990-91, 1991-92 and AY 1992-93 is Rs. 1,14,43,051/-. The profit will be more, if the drawings during the period of the partners are included. The drawings and taxes paid is:

	drawings	taxes paid
1990-91	Rs.20,30,584/-	Rs.2,48,287/-
1991-92	Rs.18,87,648/-	
1992-93	Rs.29,12,038/-	Rs.2,72,212/-
1993-94 (Figures not available from assessment records.)	Rs.68,30,270/-	Rs.3,83,925/-

Thus, the profit for the three years would be Rs. 1,86, 57, 246/- (1,14,43,051 + 68,30,270 + 3,83,925). Under assessment of income for the three years is, therefore, Rs.1,69,92,728 i.e., (18657246 – 1664518).

The sales estimated by AO for each of the 3 years less depreciation for each year is taken as the basis for determining the proportion in which the underassessment has been made.

AY	**Sales estimated by AO**	**Depreciation**	**Balance**	**Under-Assessment**
1990-91	90079199	4329815	85749384	6324989
1991-92	82124877	6222432	75902441	5598817
1992-93	72294757	3575079	68719678	5068892
Total under-assessment				16992728

In view of the above, I have reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income as determined above, chargeable to tax has escaped assessment.

38. Thus, from a reading of the reasons recorded by the assessing officer leading to formation of his belief that income of the assessee had escaped assessment for the assessment years under consideration, it is seen that the only material which came into possession of the assessing officer subsequently was the balance sheet of the assessee for the assessment year 1989-90 obtained from the South Indian Bank. After obtaining this balance sheet, the assessing officer compared the same with the balance sheet and profit loss account of the assessee for the assessment year 1993-94. On such comparison, the assessing officer noticed significant increase in the current and capital accounts of the partners of the assessee. On that basis, he drew the inference that profit of the assessee for the three assessment years under consideration would be significantly higher which had escaped assessment. The figure of under assessment was quantified at Rs.1,69,92,728.00. Therefore, he recorded that he had reason to believe that due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessments, incomes chargeable to tax for the three assessment years had escaped assessment.

39. Assessee did not submit regular balance sheet and profit and loss account for the three assessment years under consideration on the ground that books of account and other materials/documents of the assessee were seized by the department in the course of search and seizure operation which were not yet returned to the assessee. In the absence of such books etc., it became difficult for the assessee to maintain yearwise regular books of account etc. However, regular books of account and profit and loss account were filed by the assessee along with the return of income for the assessment year 1993-94. What the assessing officer did was to cull out the figures discernible from the balance sheet for the assessment year 1989-90 obtained from the South Indian Bank and compared the same with the balance sheet submitted by the assessee before the assessing officer for the assessment year 1993-94 and thereafter arrived at the aforesaid conclusion.

40. It may be mentioned that the assessee had filed its regular balance sheet as on 31.12.1985 while filing the return of income for the assessment year 1986-87. The next balance sheet filed was as on 31.03.1993 for the assessment year 1993-94. No balance sheet was filed in the *interregnum* as according to the assessee, it could not maintain proper books of account as the relevant materials were seized by the department in the course of a search and seizure operation and not yet returned. It was not possible for it to obtain ledger balances to be brought down for the succeeding accounting years. As regards the balance sheet as on 31.03.1989 filed by the assessee before the South Indian Bank and which was construed by the assessing officer to be the balance sheet of the assessee for the assessment year 1989-90, the explanation of the assessee was that it was prepared on provisional and estimate basis and was submitted before the South Indian Bank for obtaining credit and therefore could not be relied upon in assessment proceedings. It appears that this balance sheet was also relied upon by the assessing officer in the re-assessment proceedings of the assessee for the assessment year 1989-90. In the first appellate proceedings, CIT(A) in its appellate order dated 26.03.2002 held that such profit and loss account and the balance sheet furnished to the South Indian Bank were not reliable and had discarded the same. That being the position, the assessing officer could not have placed reliance on such balance sheet submitted by the assessee allegedly for the assessment year 1989-90 to the South Indian Bank for obtaining credit. *Dehors* such balance sheet, there were no other material in the possession of the assessing officer to come to the conclusion that income of the assessee for the three assessment years had escaped assessment.

41. It is true that Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The assessee is under further obligation to disclose all material facts necessary for his assessment for that year fully and truly. However, as has been held by the constitution bench of this Court in *Calcutta Discount Company Limited* (supra), while the duty of the assessee is to disclose fully and truly all primary and relevant facts necessary for assessment, it does not extend beyond this. Once the primary facts are disclosed by the assessee, the burden shifts onto the assessing officer. It is not the case of the revenue that the assessee had made a false declaration. On the basis of the “balance sheet” submitted by the assessee before the South Indian

Bank for obtaining credit which was discarded by the CIT(A) in an earlier appellate proceeding of the assessee itself, the assessing officer upon a comparison of the same with a subsequent balance sheet of the assessee for the assessment year 1993-94 which was filed by the assessee and was on record, erroneously concluded that there was escapement of income and initiated reassessment proceedings.

42. We may also mention that while framing the initial assessment orders of the assessee for the three assessment years in question, the assessing officer had made an independent analysis of the incomings and outgoings of the assessee for the relevant previous years and thereafter had passed the assessment orders under Section 143(3) of the Act. We have already taken note of the fact that an assessment order under Section 143(3) is preceded by notice, enquiry and hearing under Section 142(1), (2) and (3) as well as under Section 143(2). If that be the position and when the assessee had not made any false declaration, it was nothing but a subsequent subjective analysis of the assessing officer that income of the assessee for the three assessment years was much higher than what was assessed and therefore, had escaped assessment. This is nothing but a mere change of opinion which cannot be a ground for reopening of assessment.

43. There is one more aspect which we may mention. Admittedly, the returns for the three assessment years under consideration were not accompanied by the regular books of account. Though under sub-section (9)(f) of Section 139, such returns could have been treated as defective returns by the assessing officer and the assessee intimated to remove the defect failing which the returns would have been invalid, however, the materials on record do not indicate that the assessing officer had issued any notice to the assessee bringing to its notice such defect and calling upon the assessee to rectify the defect within the period as provided under the aforesaid provision. In other words, the assessing officer had accepted the returns submitted by the assessee for the three assessment years under question. At this stage, we may also mention that it is the case of the assessee that though it could not maintain and file regular books of account with the returns in the assessment proceedings for the three assessment

years under consideration, nonetheless it had prepared and filed the details of accounts as well as incomings and outgoings of the assessee etc. for each of the three assessment years which were duly verified and enquired into by the assessing officer in the course of the assessment proceedings which culminated in the orders of assessment under subsection (3) of Section 143. Suffice it to say that a return filed without the regular balance sheet and profit and loss account may be a defective one but certainly not invalid. A defective return cannot be regarded as an invalid return. The assessing officer has the discretion to intimate the assessee about the defect(s) and it is only when the defect(s) are not rectified within the specified period that the assessing officer may treat the return as an invalid return. Ascertaining the defects and intimating the same to the assessee for rectification, are within the realm of discretion of the assessing officer. It is for him to exercise the discretion. The burden is on the assessing officer. If he does not exercise the discretion, the return of income cannot be construed as a defective return. As a matter of fact, in none of the three assessment years, the assessing officer had issued any declaration that the returns were defective.

44. Assessee has asserted both in the pleadings and in the oral hearing that though it could not file regular books of account along with the returns for the three assessment years under consideration because of seizure by the department, nonetheless the returns of income were accompanied by tentative profit and loss account and other details of income like cash flow statements, statements showing the source and application of funds reflecting the increase in the capital and current accounts of the partners of the assessee etc., which were duly enquired into by the assessing officer in the assessment proceedings.

45. Thus, having regard to the discussions made above, we are therefore of the view that the Tribunal was justified in coming to the conclusion that the reassessments for the three assessment years under consideration were not justified. The High Court has erred in reversing such findings of the Tribunal. Consequently, we set aside the common order of the High Court dated 12.09.2009 and restore the common order of the Tribunal dated 29.10.2004.

46. The above conclusions reached by us would cover the other civil appeals of this batch as well. Resultantly, all the civil appeals filed by the assessee and its partners are hereby allowed. No costs.