

(1988) 07 GAU CK 0010

Gauhati High Court**Case No:** Income-tax Reference No. 16 of 1975

Sharma and Siddhanta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: July 16, 1988**Acts Referred:**

- Income Tax Act, 1961 - Section 147

Citation: (1989) 175 ITR 53**Hon'ble Judges:** A. Raghuvir, C.J; S.N. Phukan, J**Bench:** Division Bench**Advocate:** J.P. Bhattacharjee, P.G. Baruah, D. Goswami and U. Baruah, for the Appellant;
None, for the Respondent

Judgement

A. Raghuvir, C.J.

The assessee in this reference is a partnership firm run under the name and style of Sharma and Siddhanta. The assessment of the firm for the year 1962-63 was reopened. The reopening order was assailed in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed the appeal. He held :

"There was thus no omission on the part of the appellant to disclose material facts originally in its assessments. The later information which came into the possession of the Income Tax Officer regarding confessions of the hundiwallas entitled him to action u/s 147(b) and not u/s 147(a). The order of the Appellate Assistant Commissioner was reversed by the Appellate Tribunal. The Tribunal relied on the decision of the Calcutta High Court in the case of [Lakhmini Mewal Das Vs. Income Tax Officer, "J" Ward and Others](#), and confirmed the order of the Income Tax Officer and reversed the order in appeal and held : "Considering the facts for the assessment year 1962 63, we find that action u/s 147(a) has been taken on the ground that the assessee had disclosed in his books that it had taken certain loans

from various parties. These loans were accepted as genuine. Subsequently, the Income Tax Officer found that these loans were bogus and that these parties were acting merely as name-lenders. He, therefore, held that these amounts represented the assessee's undisclosed income and believed that this amount had escaped assessment by reason of the failure of the assessee to disclose fully or truly all material facts for the assessment. The source of receipt of the amounts appearing as credits in the books of the assessee is a material fact for the assessment and if the assessee fails to make a full and true disclosure about the same, the provisions of Section 147(a) would be applicable. The evidence mentioned by the Income Tax Officer in his reasons for taking action u/s 148 is sufficient for the Income Tax Officer to come to the prima facie conclusion that the loan transaction appearing in the books of the assessee were not genuine transactions. The Income Tax Officer has categorically recorded that he had reason to believe that these amounts represented the undisclosed income of the assessee. In his reasons recorded on the order sheet, he has also mentioned that these amounts escaped assessment by reason of the assessee's failure to disclose fully and truly all the material facts necessary for the assessment."

2. The Tribunal accepted the decision of the Appellate Assistant Commissioner. The Tribunal referred the following questions u/s 256(1) of the Income Tax Act, 1961. The question is : "whether, on the facts and in the circumstances of the case, the Tribunal was correct in setting aside the order of the Appellate Assistant Commissioner relating to the assessment year 1962-63 and in restoring the appeal to his file for disposal of the same on merits on the ground that the Income Tax Officer was justified in taking action u/s 147(a) of the Income Tax Act, 1961 ?"

3. The decision of the Calcutta High Court in [Lakhmini Mewal Das Vs. Income Tax Officer, "J" Ward and Others](#), was considered by a larger Bench of the same High Court. On appeal, the above decision was set aside in [Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others](#). The Supreme Court accepted the majority view in [Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others](#). The decision of the Supreme Court is reported in [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das](#), .

4. The Appellate Assistant Commissioner considered the facts and circumstances of the case properly and applied the ratio of the decision of this court reported in [Seth Kirorimal Adwani and Others Vs. Income Tax Officer, "E" Ward and Others](#). Therefore, we do not see any vice in the decision of the Appellate Assistant Commissioner.

5. We, therefore, answer the above question in the negative, i.e., in favour of the assessee and against the Revenue.

6. The reference is answered accordingly. No costs.