courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 28/10/2025

COMMISSIONER OF INCOME TAX Vs SHANKAR INDUSTRIES.

IT. Ref. No. 117 of 1983

Court: Calcutta High Court

Date of Decision: April 29, 1991

Citation: (1993) 112 CTR 25 : (1993) 69 TAXMAN 492

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 256(2) of the IT Act, 1961, for the asst. yr. 1961-62 the following question of law has been referred to this Court :

Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the ITO was not justified in

initiating the proceedings under s. 147(a)/148 of the IT Act, 1961, and in that view setting aside the orders of the ITO ?

2. Shortly stated the facts are that the assessee is a registered firm. The ITO made the assessment for the asst. yr. 1961-62, in due course.

Subsequently the said assessment was reopened under s. 147(a) of the IT Act, 1961, on the ground that certain hundi loans were not genuine.

After having heard the assessee, the ITO made the reassessment and included therein Rs. 1,85,000 as income of the assessee from ""undisclosed

sources"" and Rs. 15,132 being interest thereon. On appeal, the ITOs action was confirmed by the learned AAC.

3. Thereafter, the assessee came up in second appeal before the Tribunal when there was a difference between the Members constituting the

Bench. The Accountant Member was of the opinion that the case was covered by an earlier order of the Tribunal dt. 2nd December, 1978 in ITA

No. 4277 (Cal) of 1976-77 relating to the assessees case for the asst. yr. 1960-61 wherein the orders of the authorities below were set aside. The

Judicial Member was of the opinion that the reopening of the proceedings under s. 147 in respect of loans said to have been advanced to M/s.

Daluram Guganmal was in order. Accordingly, the following two points of difference were referred to Third Member who in this case was the

President :

1. Whether, on the facts and in the circumstances of the case, the initiation of proceedings under s. 147(a) of the IT Act is justified ?

2. If the answer to the above question is in the affirmative, whether addition on account of hundi loan appearing in the name of M/s. Daluram

Guganmal is justified even though the creditor admitted to have advanced the loan to the assessee ?

The Third Member agreed with the Accountant Member and came to the conclusion that the present case was covered by the earlier order of the

Tribunal. In accordance with the opinion of the learned Third Member the appeal was decided in favour of the assessee and allowed.

4. The only question which arises for consideration is whether there was any material before the ITO to form the belief that by reason of omission

of failure on the part of the assessee the income chargeable to tax has escaped assessment. The reasons which have been recorded by the ITO for

reopening the assessment are as follows :

During the course of the assessment proceedings for the asst. yr. 1965-66, I have occasion to investigate unsecured loans which stood at Rs.

10,27,348 at the close of the accounting year relevant for the said year in the books of the firm. It was noticed that a large number of them were

bogus hundi or Khattapata loans or loans from the next of the kith and kin of the partners, genuineness whereof could not be proved by the

concern. Hence, the amount credited to some of these accounts will be assessed as income from undisclosed source for a consideration amount.

Similar loans are noticed for the asst. yr. 1961-62 and these stood at Rs. 4,36,582 as per balance sheet ending 2017 R.N.

5. From the reasons recorded it appears that in course of the assessment proceedings for the asst. yr. 1965-66 the ITO found that a large number

of loans for that year bogus hundi or khattapata loans and the genuineness thereof could not be proved by the assessee. Similar loans were noticed

for the asst. yr. 1961-62 and on that basis he formed the belief that the loans for the assessment years are also not genuine.

6. There was a difference of opinion between the Accountant Member and the Judicial Member on the basis of the findings with regard to the

jurisdiction of the ITO to reopen the assessment. The Judicial Member was of the view that in respect of the loan of M/s. Daluram Guganmal the

reopening was justified whereas the Account Member did not to that view. The Third Member was of the view that there was no material before

the ITO for the formation of the belief that the loans were bogus and, accordingly, he agreed with the Accountant Member that proceedings were

not validly initiated. We have already set out the reasons which have been recorded by the ITO. We do not find any link between the material and

the reopening of the assessment. It has only been stated in the reasons recorded that in the subsequent year some of the loans were found to be

bogus. It has not been stated anywhere whether there was any confessional statement or if such confessional statement was in respect of the

transaction for the assessment year in question, the Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, held

that the grounds or reasons which lead to the formation of the belief contemplated by s. 147(a) of the Act must have a material bearing on the

question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. In

this case, as we have indicated no opportunity has been given how the ITO came to the prima facie belief that the loans appearing in the different

accounts were bogus. No confession was relied on. Even assuming that there was a confession as it appears from the order of assessment, it has

not been found out whether it pertains to the loans shown to have been advanced to the assessee for the assessment year in question. The

Supreme Court in Lakhmani Mewal Das (supra) held that the reasons for the formation of the belief must have a rational connection or relevant

bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to

the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular

year because of his failure to disclose fully and truly all material facts.

7. In this case on the facts which have been disclosed and having regard to the views expressed by the two Members of the Tribunal we do not

find any live link as laid down by the Supreme Court to hold that the ITO had any material to reopen the assessment.

For the reasons aforesaid, we answer the question in this reference in the negative and in favour of the assessee.

There will be no order as to costs.

SHYAMAL KUMAR SEN, J. :

I agree.