Assistant Commissioner of Income Tax and Others Vs Sarvamangala Properties

Court: Calcutta High Court

Date of Decision: Dec. 19, 2001

Acts Referred: Income Tax Act, 1961 â€" Section 147

Citation: (2002) 177 CTR 407 : (2002) 257 ITR 722 : (2003) 133 TAXMAN 126

Hon'ble Judges: Tarun Chatterjee, J; Asit Kumar Bisi, J

Bench: Division Bench

Advocate: Dipak Som and Md. Nizamuddin, for the Appellant;R.N. Bajoria and J.P. Khaitan, for the Respondent

Final Decision: Dismissed

Judgement

Asit Kumar Bisi, J.
The appeal being A. P. O. No. 701 of 1992 has been preferred by the appellant against the judgment and order dated

June 19, 1991, passed by the learned single judge of this court in Matter No. 622 of 1990. By the judgment and order impugned the learned judge

allowed the writ petition filed by the petitioner, presently the respondent, and set aside the notice in question issued u/s 148 of the Income Tax Act,

1961 (hereinafter referred to as ""the Act""), in respect of the assessment year in question. The notice impugned in this proceeding is dated March

30, 1987, and the same relates to the assessment year in question 1970-71.

2. The facts of the case may briefly be stated as follows :

In 1950, the petitioner purchased premises No. 5, Clive Row, Calcutta (hereinafter referred to as the said ""premises""), at a public auction which

was conducted by the certificate officer under the provisions of the Bengal Public Demands Recovery Act, 1913. The petitioner purchased the

said premises subject to prior encumbrances for a total price of Rs. 2,27,250. The auction under the Bengal Public Demands Recovery Act, 1913,

was for recovery of sales tax. The petitioner took possession of the said premises and the same had been mutated in the name of the petitioner in

the records of the Calcutta Corporation. On April 3, 1957, the Hongkong and Shanghai Banking Corporation, Calcutta, filed a suit against the

original owner of the premises as well as the petitioner for recovery of a sum of Rs. 35,34,063.11.6 on the ground that the premises had been

mortgaged by the original owner to the bank. The interlocutory application filed by the bank in the said suit was disposed of by an order dated

April 29, 1957. The said order in so far as it is material provides as follows (wherein the petitioner is referred to as the defendant firm and the bank

as the plaintiff-bank) :

It is ordered by and with the consent of the plaintiff-bank and the said defendant firm and without prejudice to the rights and contentions of the

parties that the said defendant firm shall collect the rent issue and profits of the premises No. 5, Clive Row, Calcutta, and pay all outgoings thereof.

And it is further ordered that the plaintiff-bank shall write to all the tenants withdrawing objection to the tenants paying rents to the said defendant

firm and the tenants shall pay accordingly and it is further ordered that the said defendant firm shall be at liberty to withdraw rents deposited by

tenants with the Rent Controller and it is further ordered that the said defendant firm shall pay monthly and every month a sum of Rs. 17,500 to the

plaintiff-bank the first of such monthly payments be made on or before the 15th day of June next and subsequent payments on or before 15th of

each month and every subsequent month. And it is further ordered that in default of the said defendant firm failing to pay any of such monthly

payments as aforesaid Mr. R. Mills failing him Mr. S. S. T. B. Laver of the plaintiff-bank be appointed receiver of the rents issues and profits of 5,

Clive Row, Calcutta.

3. Pursuant to the said interim order, the petitioner paid Rs. 17,500 per month to the bank up to March, 1976. Since 1961-62, the income from

the premises was assessed in the hands of the petitioner. Deduction was claimed by the petitioner in respect of the said sum of Rs. 17,500 per

month on account of interest. As claimed by the petitioner, for the assessment year 1961-62, the petitioner disclosed all the material facts leading

up to the purchase of the premises including the pleadings relating to the suit filed by the bank as well as the interim order dated April 29, 1957,

before the Income Tax Officer and the Income Tax Officer allowed the claim of the petitioner in respect of the said payment of Rs. 17,500 per

month on account of interest. The said deduction was permitted by the Income Tax Officer for the assessment years 1962-63 to 1976-77. The

said suit was decreed on January 22, 1976, in favour of the bank whereupon the petitioner preferred an appeal from the judgment and decree

dated January 22, 1976. The appeal was disposed of by the appeal court on May 19, 1987, and the decree dated January 22, 1976, was

modified by consent. It was agreed between the parties that the bank would retain Rs. 30 lakhs out of the amount paid by the petitioner to the

bank in pursuance of the above noted interim order dated April 29, 1957, and would refund a sum of Rs. 9,02,292.70 together with a further

amount of Rs. 4,40,000 on account of interest. This has been done by the bank.

4. In the meantime a series of notices u/s 148 of the Act were issued to the petitioner. These notices have been separately challenged in different

proceedings as noted below :

Year Notice Proceedings

1. 1970-71 30-3-1987 Matter No 2429 of 1987,

Rule nisi and interim order issued ,

2. 1971-72 29 3-1988 Matter No 3389 of 1988 ,

3. 1972-73 31-3-1989 Matter No 622 of 1990,

1974-75

- Interim order issued,

4. 1975-76 -

1976-77 - Appeals pending before the Tribunal,

5. 1977-78 - Proceedings dropped

5. The reasons recorded for issuing the impugned notices have been disclosed by the respondents. The reasons are as follows :

The assessee filed the return of income for the assessment year 1970-71 disclosing a total income of Rs. 31,594. In the profit and loss account for

the year ending March 31, 1970, at the time of filing the original return the asses-see has shown income from rent as under :

Rs.

Rent 5,60,721

Less : Paid to Hongkong and Shanghai Bank 2,10,000

Corporation in terms of High Court''s order

dated 28-5-1957 in Suit No. 689 of 1957

3,50,721

6. In the computation of property income filed along with the return, the assessee has claimed, amongst others, deduction of Rs. 2,10,000 as

interest. The Income Tax Officer acted upon the information filed by the assessee and accepted the income from property by alloying Rs. 2,10,000

as interest as worked out by the assessee. In this connection, the relevant portion of the High Court''s order dated April 28, 1957, is extracted

below :

''And it is further ordered that the said defendant firm shall pay monthly and every month a sum of Rs. 17,500 to the plaintiff bank first of such

monthly payment to be made on or before the 15th day of June next and subsequent payments on or before the 15th of each month.'' Nowhere in

the said judgment of the High Court the word ''interest'' has been mentioned. Only the word ''payment'' has been mentioned. However, in the said

concise statement in para. 4, page 6, of the plaint dated April 3, 1987, it is mentioned as under :

''The plaintiff from time to time lent and advanced to defendant No. 1, various sums of money for the purpose of the latter''s business and after

giving credit to defendant No, 1 for all the sums paid by it or realised by the plaintiff on account of defendant No. 1 a sum of Rs. 35,34,063.11.6

is due and owing by defendant No. 1 to the plaintiff calculated as on December, 1956''.

7. A reading of the statement of the plaint and the judgment of the Calcutta High Court suggests that the payment of Rs. 2,10,000 was never

towards the interest. Hence, the assessee failed to disclose fully and truly in the original return all the primary facts necessary.

8. I have, therefore, reason to believe that the assessee''s income to the extent of Rs. 2,10,000 chargeable to tax has escaped assessment for the

assessment year 1970-71 due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

9. Pursuant to the impugned notice the petitioner filed a return in respect of the assessment year 1970-71. As per the case of the writ petitioner the

said return was filed under cover of a letter in which it was made clear that the same was being filed without prejudice to the petitioner''s rights and

contentions.

10. The petitioner offered to settle the proceedings between the parties. Several letters were written. The last letter written ultimately on March 9,

1989, was to the following effect :

(a) We will have also no objection if the sum of Rs. 9,02,292 received from Hongkong Bank during the previous year relevant to the assessment

year 1988-89 is subjected to tax during the assessment year 1988-89.

(b) In that case, however, the Department will have to cancel the assessments already made u/s 147(a)/143(3) for the assessment year 1975-76

and 1976-77.

(c) It will also drop further proceedings in reopening of the assessment years 1970-71 and 1971-72.

(d) The Department will also have to agree not to reopen assessment u/s 147 for any of the years.

(e) The Department will not also charge interest u/s 139(8)/215/ 217 of the Income Tax Act in respect of the assessment year 1988-89 and also

will not start any penalty proceedings u/s 273/271(l)(a) in respect of the said year.

11. The reassessment is sought to be made u/s 147(a) of the Act as it then stood. The instant writ petition has been filed by the petitioner

challenging the impugned notice primarily on the ground that there was no omission or failure on the part of the petitioner justifying reopening the

assessment for the assessment year in question u/s 147(a) of the Act.

12. The contentions raised on behalf of the Revenue, inter alia, are that by a letter dated July 22, 1988, written by the petitioner, the petitioner had

stated that it was agreeable to accept the disallowance in question and the petitioner was prepared to submit the returns in respect of the years

1972-73 to 1974-75 subject to the respondents issuing notices in respect of the years in question u/s 148 of the Act and as such the petitioner was

estopped from challenging the impugned notice. It has been further contended on behalf of the Revenue that the petitioner having filed a return

pursuant to the impugned notice waived its rights to challenge the same under article 226 of the Constitution of India and the respondents were

statutorily bound to deal with the return filed by the petitioner u/s 143(3) of the Act. It is the specific case of the Revenue that at the time of initial

assessment of the income from the premises in the petitioner''s hands, the petitioner wrongly claimed deduction of payment of Rs. 17,500 per

month on account of interest and this was allowed by the Income Tax Officer. In fact, the payment was towards payment of the mortgage debt and

was capital expenditure and as such there was failure on the part of the petitioner to disclose the matter fully and truly to the Income Tax Officer as

a result of which the income had escaped assessment justifying reopening of the assessment for the assessment year in question u/s 147(a) of the

Act as it stood at the material time.

13. The learned judge refused to accept any of the contentions raised by the Revenue and allowed the writ petition filed by the writ petitioner.

14. Being aggrieved by and dissatisfied with the impugned order passed by the learned judge the instant appeal has been preferred by the Revenue

as the appellants alleging, inter alia, that the learned judge erred in not holding that the conditions precedent to exercise of jurisdiction u/s 147/148

of the Income Tax Act existed in this case before the issue of notice u/s 147/148 of the Income Tax Act, that the learned judge should have held

that the income of the assessee escaped due to non-disclosure of material fact by the writ petitioner at the time of the original assessment and the

learned judge erred in law in holding that all material and primary facts were disclosed by the writ petitioner at the time of the original assessment. It

has been further alleged by the appellants that the learned judge ought to have taken into consideration the fact that the writ petitioner failed to

disclose material facts fully and truly by suppressing from the Income Tax Officer the relevant fact that the amount of Rs. 17,500 per month was

not payment of interest to the bank in terms of the order of the High Court dated April 29, 1957, and that the learned judge should have held that

the writ petitioner suppressed the fact that the property was purchased by the writ petitioner subject to prior encumbrances and the sum of Rs,

17,500 per month amounting to Rs. 2,10,000 per year was paid towards discharge of encumbrances on the property purchased and as such the

same is capital expenditure and not payment of interest of loan taken from the bank by the writ petitioner as incorrectly stated by the writ petitioner

in the Income Tax returns and as such the Income Tax Officer was justified in reopening the assessment.

15. The instant appeal was contested by the respondent/writ petitioner justifying the findings made by the learned judge.

16. The sole point arising for decision in the present appeal is whether or not the learned judge was justified in allowing the writ petition and setting

aside the impugned notice in question.

17. It appears that the respondent/writ petitioner filed the writ petition challenging the impugned notice primarily on the ground that there was no

omission or failure on the part of the petitioner justifying the reopening of the assessment for the assessment year in question u/s 147(a) of the Act.

The contentions raised on behalf of the appellants, on the other hand, is that the respondent/writ petitioner failed to disclose the material fact by

suppressing from the Income Tax Officer the relevant fact that the amount of Rs, 17,500 per month was not payment of interest to the bank in

terms of the order of the High Court dated April 29, 1957, and such non-disclosure of material fact fully and truly led to escapement of income

from assessment warranting reopening of the assessment for the assessment year in question u/s 147(a) of the Act.

18. Section 147(a) of the Act as it stood at the relevant time prior to its amendment reads as follows :

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 u/s 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 ...

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as

the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped

assessment, namely : --

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

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

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922), or

(d) where excessive loss or depreciation allowance has been computed. Explanation 2.--Production before the Income Tax Officer of account

books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not

necessarily amount to disclosure within the meaning of this section.

19. It was contended by the learned advocate for the appellants that at the time of initial assessment of the income from the premises in the

petitioner"s hands the respondent wrongly claimed deduction of payment of Rs. 17,500 per month on account of interest and the same was

allowed by the Income Tax Officer. It has been further contended on behalf of the appellants that the said payment was in fact towards payment of

the mortgage debt and as such the respondent had failed to disclose the matter fully and truly to the Income Tax Officer as a result of which income

had escaped assessment necessitating the assessment u/s 147(a) of the Act. The learned advocate for the respondent/writ petitioner, on the other

hand, contended that all the relevant information and facts including those relating to the said claim of the respondent/writ petitioner were fully and

truly furnished and disclosed by the respondent to the Income Tax Officer in the course of the assessment proceedings for the assessment year in

question and as such there was no omission or failure on the part of the respondent to disclose any material or relevant fact necessary for the said

assessment.

20. The legal ambit of omission or failure to disclose fully and truly all material facts as contemplated under the relevant provisions of the Act has

been fully discussed in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . The said

case arose u/s 34 of the Indian Income Tax Act (as amended in 1951). The provisions in Section 34 were similar in material particulars to those in

Section 147 of the Income Tax Act, 1961. The purport of Section 34 of the previous Act which is identical with the provisions in Section 147 of

the Income Tax Act, 1961, has been examined in detail by the Constitution Bench in the case of Calcutta Discount Company Limited Vs. Income

Tax Officer, Companies District, I and Another, , in the following words (headnote) :

What facts were material and necessary for assessment differed from case to case. In every assessment proceeding, the assessing authority

would, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts, which help him in coming to

the correct conclusion, ... So far as primary facts were concerned, it was the assessee"s duty to disclose all of them--including particular entries in

account books, particular portions of documents, and documents and other evidence which could have been discovered by the assessing authority,

from the documents and other evidence disclosed. The duty however did not extend beyond the full and truthful disclosure of all primary facts.

Once all the primary facts were before the assessing authority, it was for him to decide what inferences of facts could be reasonably drawn and

what legal inferences had ultimately to be drawn. It was not for anybody else--far less the assessee--to tell the assessing authority what inferences,

whether of facts or law, should be drawn.

21. In the said case the alleged non-disclosure of material facts fully and truly was the failure of the assessee to disclose ""the true intention behind

the sale of the shares"". The assessee had stated during the assessment proceedings that the sale of shares during the relevant assessment years was

a casual transaction in the nature of mere change of investment and the Income Tax Officer found later that those sales were really in the nature of

trading transactions. The Revenue contended that the assessee ought to have stated that they were trading transactions and that his assertion that

they were casual transactions in the nature of change of investment amounted to omission or failure to disclose fully and truly all material facts

necessary for his assessment for that year within the meaning of Section 34. Such contention of the Revenue was rejected by the Supreme Court

holding that the true nature of transaction being a matter capable of different opinions, is not a material or primary fact but a matter of inference and

hence it cannot be said that there was an omission or failure of the nature contemplated by Section 34 on the part of the assessee.

22. The above noted principles enunciated by the Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer,

Companies District, I and Another, were followed in a large number of subsequent decisions of the Supreme Court. It is well-settled that the duty

of disclosing of primary facts relevant to the decision of the question before the assessing authority lies on the assessee and it is not for the assessee

to tell the assessing authority what inferences, whether of facts or law, should be drawn. The Supreme Court has specifically observed in the case

of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , that when it is remembered that people often

differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what

inferences--whether of facts or law--he would draw from the primary facts.

23. In the instant case it is not at all stated in the recorded reasons as to what other primary fact was required to be disclosed by the

respondent/writ petitioner before the Income Tax Officer. It is quite evident from the recorded reasons as noted earlier that the decision for

reassessment is based upon construction of the plaint and the judgment of the court. It has been pertinently observed by the learned judge that if by

judgment"" is meant the decree that was given in 1976 long after the assessment year in question and if by ""judgment"" the Income Tax Officer was

referring to the interim order dated April 29, 1957, that was made available to the Income Tax Officer by the petitioner, presently the respondent,

admittedly in 1962. It has rightly been pointed out by the learned judge as well that it appears from the assessment order for the assessment year

1958-59 in respect of one of the partners of the petitioner-firm that the fact that the premises were purchased by the petitioner subject to the

liability of Rs. 35 lakhs to the bank had been disclosed to the Income Tax Officer.

24. It is significant to note that the nature of payment of Rs. 17,500 per month, i.e., whether on account of interest or by way of capital expenditure

to the bank could not be ascertained from the order itself which was passed as far back as on April 29, 1957. The said interim order was already

quoted. The suit was decreed in 1976. It has rightly been held by the learned judge that it was only when the decree was passed in 1976 that the

payment could be said to have been towards the payment of the principal claim of the bank and as such there was no question of the petitioner

(presently the respondent) failing to disclose any fact at the time of assessment or misrepresenting any fact.

25. No question of misrepresentation arose in such case. It can in no way be assumed in a justifiable manner that the respondent/writ petitioner

could have disclosed other facts at the material time which could have led the Income Tax Officer to the conclusion that the payment of Rs. 17,500

per month was on account of capital expenditure. While dealing with this aspect of the matter, the learned judge rightly observed as follows :

Until the decree was passed in 1976 it was not possible for the parties to the litigation including the petitioner to state with certitude that the bank

would at all be successful in the suit and therefore would be entitled to appropriate the amount paid by the petitioner. Secondly, it could not be

predicted with any certainty for what amount the decree would be passed, whether interest ante item, pendente lite or upon judgment would be

allowed on the principal claim of the bank and how the payments directed to be made by the petitioner to the bank as an interim measure would be

directed to be adjusted. If that is so, the question of omission or failure on the part of the petitioner to disclose that the monthly payments for the

assessment year in question were towards capital expenditure did not arise.

26. Having regard to the facts and circumstances emerging from the materials on record we find no reason to differ from the above view of the

learned single judge.

27. The learned advocate for the respondent has pertinently drawn our attention to the contents of the letter dated November 19, 1962, addressed

by the present respondent through the lawyer to the Income Tax Officer concerned wherefrom it appears that the respondent narrated the factual

position relating to payment of Rs. 17,500 per month and asked the authority concerned to allow the amount paid to the bank out of income from

property either as annual charge or interest payment, even if the authority concerned was of the opinion that the said income was to be assessed in

the hands of the firm.

28. In the case on Gemini Leather Stores Vs. The Income Tax Officer, ''B'' Ward, Agra and Others, , the assessee did not disclose the

transactions evidenced by certain drafts which the Income Tax Officer discovered and after this discovery the Income Tax Officer had in his

possession all the primary facts. The Supreme Court held that it was for the Income Tax Officer to make necessary enquiries and draw proper

inference as to whether the amount invested in the purchase of the drafts could be treated as part of the total income of the assessee during the

relevant year and this the Income Tax Officer did not do. It is in such context the Supreme Court held that it was plainly a case of oversight and it

could not be said that the income chargeable to tax for the relevant assessment year had escaped by reason of the omission or failure on the part of

the assessee to disclose fully and truly all material facts. It has been further held in the said case that the Income Tax Officer had all the material

facts before him when he made the original assessment and as such he could not subsequently take recourse to Section 147(a) to remedy the error

resulting from his own oversight.

29. In the case on hand after carefully going through the materials on record we are clearly of the view that all the primary facts were disclosed by

the assessee-firm before the Income Tax Officer concerned at the time of the original assessment and as such there was no omission or failure on

the part of the assessee respondent to disclose fully and truly all material facts. In such event, the Income Tax authority cannot now take recourse

to Section 147(a) of the Act.

30. The learned advocate for the appellants has cited the following rulings :

(1) Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, ;

(2) Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, ;

(3) Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay, ;

(4) Praful Chunilal Patel Vs. M.J. Makwana, Assistant Commissioner of Income Tax, ; and

(5) M.M. Mahajan Vs. Gift Tax Officer, .

31. But on a careful scrutiny we find that the aforesaid decisions cannot render any assistance to the appellants in the facts and circumstances of

the present case.

32. It is settled law that when the primary facts necessary for assessment are fully and truly disclosed to the Income Tax Officer at the stage of the

original assessment proceedings, he is not entitled, on a change of opinion, to commence proceedings for reassessment. Reference can be made in

this context to the case of Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, . The case of M/s. Phool Chand Bajrang Lal and

another Vs. Income Tax Officer and another, relates to false statement made by the assessee concerned at the time of the original assessment in

that particular case. This decision of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, , does not apply to the

present case where the assessee-respondent disclosed all the primary facts required for assessment before the assessing authority fully and truly.

33. That apart, we have also carefully perused the notice issued u/s 148 of the Act in which reasons were given by the concerned officer to issue

such notice u/s 148 of the Act. The concluding portion in which reasons have been given by the Income Tax Officer for issuance of notice u/s 148

of the Act was in the following manner :

A reading of the statement of the plaint and the judgment of the Calcutta High Court suggests that the payment of Rs. 2,10,000 was never

towards the interest. Hence, the assessee failed to disclose fully and truly in the original return all the primary facts necessary. I have, therefore,

reason to believe that the assessee''s income to the extent of Rs. 2,10,000 chargeable to tax has escaped assessment for the assessment year

1970-71 due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

34. We have carefully considered the aforesaid reason for issuance of such a notice. After considering the reason given in the said notice as noted

herein earlier we are of the view that the learned judge was perfectly justified in holding that the notice u/s 148 of the Act was absolutely without

jurisdiction. It is an admitted position that the order of this court passed in the suit was in fact a direction for payment of Rs. 17,500 per month

which was made at the interlocutory stage of the suit. This order was duly produced and had been shown in the accounts of the particular

assessment year in question and also was duly produced by the assessee before the Income Tax Officer. They claimed that such an amount was

paid on account of interest. In this connection, we may also refer to the original order of assessment from which it would be evident that the

Income Tax Officer had considered such payment and also considered whether the claim of the assessee that this payment was made on account

of interest was justified or not. After hearing the assessee and after examining the entire materials on record which clearly disclosed the amount

claimed by the assessee on account of interest the Income Tax Officer came to a legal inference in his original assessment order to the extent that

such amount was paid or deposited in lieu of interest. Therefore, in our view, the writ petitioner/respondent had disclosed fully and truly in its

original return all facts, which were necessary for assessing the assessee for the assessment year in question. That being the position we are of the

view that the learned trial judge was fully justified in holding that any income chargeable to tax had not escaped assessment for the assessment year

in question. For the reasons aforesaid we dp not find any reason to interfere with the order of the learned trial judge as we find that the Income Tax

Officer while deciding the assessment of the writ petitioner/respondent had taken into consideration all facts which were disclosed truly before him

and thereafter came to the aforesaid finding and as such by no means it can be said that the writ petitioner/ respondent had not disclosed the true

and full material facts before the Income Tax Officer.

35. No other points have been argued before us in the course of hearing of the appeal.

36. There is no merit in the instant appeal and the same is liable to be dismissed. The appeal being A. P. O. No. 701 of 1992 is dismissed. The

judgment and order under appeal are affirmed.

37. There will be no order as to costs.

38. No separate argument has been advanced by the learned advocate for the parties in connection of A. P. O. No. 699 of 1992 and A. P. O

No. 700 of 1992, which involve the identical facts and question of law. That being so, the judgment passed in A. P. O. No. 701 of 1992 will also

govern both A. P. O. No. 699 of 1992 and A. P. O. No. 700 of 1992 as a result of which these two appeals are also dismissed.

39. In view of disposal of the above noted appeals the reference case being I. T. R. No. 101 of 1995 is disposed of in favour of the assessee and

against the Revenue.

40. As prayed for, stay of operation of the order is granted for two months.

Tarun Chatterjee, J.

41. I agree.