(2001) 12 CAL CK 0030

Calcutta High Court

Case No: A.P.O. No''s. 699, 700 and 701 of 1992 and Income Tax Reference No. 101 of 1995

Assistant Commissioner of Income Tax and Others		APPELLANT
	Vs	
Sarvamangala Properties		RESPONDENT

Date of Decision: Dec. 19, 2001

Acts Referred:

- Income Tax Act, 1961 - 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 Corporation in terms of High Court''s order dated 28-5-1957 in Suit No. 689 of 1957	2,10,000
	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.