

(2001) 01 DEL CK 0128

Delhi High Court

Case No: Income Tax R. No's. 179-181 of 1981

New Light Trading Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Jan. 4, 2001**Acts Referred:**

- Income Tax Act, 1961 - Section 147

Citation: (2001) 170 CTR 138 : (2002) 256 ITR 391 : (2001) 117 TAXMAN 741**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J**Bench:** Division Bench**Advocate:** R.D. Jolly and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.

At the instance of the assessed, the following question has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Delhi Bench "B", Delhi (in short, the "Tribunal"), u/s 256(1) of the Income Tax Act, 1961 (in short, "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the reopening of the assessments u/s 147(b) based on the audit report was valid in law ?"

2. The factual position as indicated in the statement of the case, is as follows :

The dispute relates to the assessment years 1971-72 to 1973-74 and the question, as referred above, is common to all the three references. Assessment proceedings which were completed were reopened by the Income Tax Officer on the ground that information came into his possession that interest allowed to Gulzari Mal was not admissible under law and has been wrongly allowed. This information came into the possession of the Income Tax Officer through the audit report, which is an external agency. During the course of reassessment it was noticed by the Income Tax Officer that interest had been paid to Gulzari Mal who represented the Hindu undivided

family as karta in the firm, in that capacity on the funds invested by the Hindu undivided family in the firm. He also noticed that interest was paid to Gulzari Mal, as an individual, on the funds invested by him in the firm. He was, Therefore, of the view that the interest paid to Gulzari Mal, as an individual, has to be disallowed. Accordingly, Rs. 4,793, Rs. 6,577 and Rs. 8,166 for the three assessment years in question respectively were disallowed. The matter was carried in appeals before the Appellate Assistant Commissioner (in short "the AAC"). The said authority upheld the reassessments. Appeals were preferred by the assessed before the Tribunal. The stand of the assessed before the Tribunal was that in view of the decision of the apex court in the case of [Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi](#), , the reopening of the assessments was invalid, since the opinion of an audit party cannot be regarded as information within the meaning of section 147(b) of the Act. The Tribunal directed the departmental representative to produce the audit report in order to enable it to come to a conclusion as to whether the audit party had given an opinion on a point of law. After perusal of the records, the Tribunal came to hold that though the audit party does not possess the power to pronounce on the legal aspects, it nevertheless may draw the attention of the Assessing Officer to certain aspects which constitute information within the meaning of section 147(b) of the Act. It is only that part which embodies the opinion of the audit party in regard to the application or interpretation of law that cannot be taken into account by the Income Tax Officer. Accordingly, the Tribunal upheld the assessments. Further, the application in terms of section 254(2) of the Act was rejected by the Tribunal.

3. On being moved, the question, as set out above/ has been referred for the opinion of this court.

4. There is no appearance on behalf of the assessed in spite of the notice. We have heard learned counsel for the Revenue. It is submitted that in view of the decisions of the apex court in [Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi](#), and [Commissioner of Income Tax Vs. P.V.S. Beedies Pvt. Ltd.](#), , the conclusions of the Tribunal are irreversible.

5. In the case of [Commissioner of Income Tax Vs. P.V.S. Beedies Pvt. Ltd.](#), , the apex court held that the audit party can point out a fact, which has been overlooked by the income tax Officer in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. As the Tribunal has rightly noticed, this was not a case of the Assessing Officer merely acting at the behest of the audit party or on its report. It has independently examined the materials collected by the audit party in its report and has come to an independent conclusion that there was escapement of income. The answer to the question is, Therefore, in the affirmative, in favor of the Revenue and against the assessed.