

Sh. S.P. Jaiswal Etc. v. The Commissioner of Income Tax

Civil Appeal Nos. 2587–2592 of 1983 Etc. (additional numbers not supplied)

[1997] 2 SCR 746 | 1997-03-06

Whether the recorded accounting arrangement was a genuine loan and whether the High Court could sustain taxation of the interest in the assessee's hands on that record.

61 | 256(1) | 256(2) | 60 (High Court distinction) | 64(1) (expressly not the operative question)

Two-judge bench | S.C. Agrawal, J. | G.B. Pattanaik, J.

Assessment years: 1963-64, 1967-68, 1968-69, 1969-70, 1970-71

Specific paper-device finding, not a bar on genuine family loans

The Court upheld taxation on the recorded circular entries and inconsistent explanation, while recognising the possibility of a genuine family loan. Earlier taxation of another person did not bar assessment of the correct person; no refund issue was decided. The note preserves missing appeal-year mapping and the reference's broader wording, and supplies no universal section 64 or current-law rule.

01 FACTS OF THE CASE

The assessee, managing director of Karnal Distillery, had Rs 1,74,639 standing to his credit on 3 April 1962. Book entries moved that amount to Modern Property Dealers, a firm of his two sons and daughter in equal shares. On 1 April 1963 the firm's books showed a return to him and, the same day, equal loans by him to the three partners. The assessee initially returned the interest for AY 1963-64 but removed it in a revised return (physical page 4).

The earlier-year challenge failed before the tax authorities and Tribunal; a section 256(2) question concerned the Rs 15,814 addition. For AYs 1967-68 through 1970-71, the Tribunal accepted the non-benami character and deleted interest additions, but referred Revenue's question. The High Court held the transaction was not a genuine loan and maintained taxation under section 61. The assessee challenged its legal conclusion and reference jurisdiction (physical pages 3–5).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Supreme Court accepted the general limitation that a reference court does not freely substitute new facts for Tribunal findings, but found the cited factual-reappraisal cases inapposite. On this record the circular book adjustments and the inconsistent affidavits established what the Court described as a paper device rather than a genuine loan. The High Court had not exceeded its advisory jurisdiction in answering the legal question (physical pages 6–10).

Revenue acknowledged that a father could genuinely lend money to children for their business; the objection was this transaction's reality, not family relationship or absence of interest alone. The Court also applied Atchaiah's right-person principle: alleged prior assessment of the children did not preclude assessing the person properly liable. It did not decide a refund or other relief in the children's assessments. The discussion expressly separated the operative issue from section 64(1) clubbing cases (physical pages 8–10).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The assessee's appeals were dismissed without costs. The High Court's Revenue-favouring answers remained undisturbed. The Court made no fresh interest computation and no order disposing of any claim for relief from the children's alleged assessments (physical page 10).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Assessee appeals dismissed; High Court answers upheld; no costs

Final on this transaction's character and the challenged reference answers

No general rule against genuine interest-free family loans, no independent section 64 clubbing holding and no ruling that duplicate recovery must be retained permanently.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Test the actual movement and control of funds, consistent documentation and the transaction's substance; a loan label or reversal entry alone does not establish a real lending transaction. At the same time, do not use the adverse factual finding as a general presumption against family funding. The Court's reasoning is tied to the circular entries and record before it.

Separate the right-person assessment question from remedial questions arising if someone else has already paid tax. This judgment rejects that fact as a bar to assessing the correct person; it does not itself grant or deny a particular refund mechanism. Its historical section 256 posture also does not define the scope of every modern appellate proceeding. Current family-loan, clubbing and procedural rules require independent verification.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, reference questions, account chronology and differing Tribunal results

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4; 5

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Reference jurisdiction and distinguished factual-reappraisal authorities

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Section 64 distinction, right-person assessment and genuine-loan concession

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Paper-device finding and dismissal

Source url: [Open cited source](#)

Pdf pages: 10

Paragraphs: Unnumbered judicial text

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

G.B. Pattanaik, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 10 PDF pages; SHA-256

95442143cae0cb1fcbea11f1b1a262ff491d603acde13bddfe949ca96be85e0b. Original bytes preserved.

Complete judicial text physical pages 3–10/SCR 748–755; multiple references and factual paper-device finding, not a general prohibition on family loans.

Open cited source rendition

The stated later-year reference mentions interest in respect of the children and wife, but the detailed transaction narrative concerns two sons and a daughter. No separate transaction or amount for the wife is invented.; The source gives six lead appeal numbers followed by Etc. but identifies only AY 1963-64 and AYs 1967-68 through 1970-71 in the reproduced questions. Missing appeal-year mapping is not supplied by inference.; The 3 April 1962 balance and 1 April 1963 return/reloan entries are distinct reported dates. Their relationship to the earlier-year addition is not reconstructed through an assumed accounting period.; The Rs 1,74,639 balance is distinct from the Rs 15,814 earlier-year interest addition. No later-year interest amounts are specified.; Non-benami treatment in the High Court discussion did not establish a genuine loan. The Court's ultimate paper-device finding and quoted Revenue concession are separately attributed.; Section 64 decisions concern other cited cases; the judgment expressly says that provision is not the actual issue here.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment search is certified. Any actually checked later judgment or statute is expressly identified in this note.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 10

SHA-256: 95442143cae0cb1fcbea11f1b1a262ff491d603acde13bddfe949ca96be85e0b

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