

Commissioner of Income Tax, Kolkata v. Mukundray K. Shah

Civil Appeal No. 1873 of 2007

[2007] 4 SCR 1104 | 2007-04-10

Were Rs. 5.99 crores paid by a closely held company through two partnership firms for its shareholder's individual benefit taxable as deemed dividend in a search-based block assessment, and could the High Court disturb the Tribunal's factual findings?

2(22)(e) | 132(1) | 132(4) | 158B(b) | 158BB(1) | 158BC | 260A

Two judges | S.H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: 2000-01

Shareholder-benefit limb, historical block assessment and factual limits

This is Civil Appeal 1873/2007, not the catalogue's miscellaneous petition. The holding concerns the traced Rs. 5.99-crore payment for the shareholder's individual benefit, not all company-to-firm transfers or the full bond/block-income totals. The stated 16% MKF interest does not lower the separate statutory twenty-per-cent concern threshold. The search nexus, merged-reserve facts and nonperverse findings are material. Later High Court distinction confirms that Tribunal findings have no absolute immunity. Later amalgamation-amendment text was not authenticated; no present merger or search-assessment rule is certified. Comprehensive later treatment, current law, amendments/savings and Income-tax Act 2025 mapping are not verified.

01 FACTS OF THE CASE

The Revenue appeal concerned Rs. 5.99 crores paid in FY 1999-2000 by M.K. Shah Exports Pvt. Ltd. (MKSEPL), including the merged Safari Capital Pvt. Ltd. (SCPL), through M.K. Foundation (MKF) and M.K. Industries (MKI). The alleged ultimate beneficiary was Mukundray K. Shah, a shareholder and director of MKSEPL and a partner in the recipient firms. The issue was AY 2000-01 within the stated block period 1 April 1990 to 24 August 2000 (physical 6-7/SCR 1109 E-1110 A, paragraphs 2-3).

A search on 24 August 2000 led to seizure of the assessee's diary ML-20 from MKSEPL's premises. It showed Rs. 26.35 crores invested in 9% RBI Relief Bonds between 17 November 1999 and 11 February 2000. Enquiries and a cash-flow chart traced part of that investment through the two firms to the companies. The assessment dated 29 November 2002 included Rs. 5.99 crores as deemed dividend. The source separately mentions Rs. 94 lakhs from M.K. Tea Pvt. Ltd., where the assessee's holding was 9.3%; that sum is not the Rs. 5.99-crore addition adjudicated in this appeal. The much larger Rs. 65.77-crore block-income figure is background, not the amount of this deemed-dividend dispute (physical 6-8/SCR 1109 F-1111 F, paragraph 3).

The assessee contended that the companies were merely repaying genuine debts to the firms; his withdrawals were debited to his capital accounts, and the firms were not qualifying shareholders of the companies. He disputed reliance on MKSEPL's reserves for SCPL, whose merger had been approved on 5 July 2001 with effect from 18 May 1998. The CIT(A) accepted the repayment and separate-entity explanation on 21 February 2003. On 28 January 2005, the Tribunal reversed: SCPL's separate existence had ended from the effective merger date, MKSEPL was the originating company, the assessee held more than 10% voting power in it, and its accumulated reserves of about Rs. 55 crores were sufficient. The Tribunal accepted the tracing of Rs. 5.99 crores rather than treating the whole Rs. 26.35-crore bond investment as deemed dividend (physical 8-10/SCR 1111 F-1113 F, paragraphs 4-5).

The High Court reversed the Tribunal. It regarded the transactions as disclosed in regular books and returns, found no sufficient evidence of a conduit or individual-benefit payment, and considered block assessment inappropriate. In the Supreme Court, the Revenue challenged interference with the Tribunal's nonperverse findings. The assessee maintained that no incriminating search material justified Chapter XIV-B, that the chart had been prepared from disclosed accounts during enquiries, and that the transfers remained ordinary debt repayments (physical 10-14/SCR 1113 F-1117 D, paragraphs 6-10).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court explained the anti-avoidance purpose of section 2(22)(e): persons controlling a closely held company could otherwise avoid dividend treatment by extracting accumulated profits as loans. Its description of that purpose is not a general corporate-law command to declare dividends. Applying the test drawn from *L. Alagusundaram Chettiar*, the Court asked whether the company's payment was for the shareholder's benefit, not merely whether the intermediary had received a loan (physical 14-15/SCR 1117 D-1118 B, paragraphs 11-12).

The cash-flow findings supplied that connection. The company's payments, immediate withdrawals by the assessee and bond purchases were close in time. The assessee held more than 10% of MKSEPL's voting power and was its director; MKSEPL was also a partner in the two firms. The Rs. 5.99 crores was routed as Rs. 2.79 crores and Rs. 3.20 crores. The assessee's withdrawals left a debit balance of Rs. 8.18 crores in his MKI capital account as at 31 March 2000, a material finding left unchallenged. The Court accepted that the firms were conduits for the shareholder's benefit, rather than treating the transfers as genuine repayments on the facts (physical 15-16/SCR 1118 A-E, 1119 A-B, paragraph 12).

Paragraph 12 also describes an approximately 16% interest in MKF as substantial. That factual recital must not be converted into a ruling that 16% satisfies the separate statutory test for a substantial interest in a non-company concern. The operative reasoning concerned a payment for the individual benefit of the qualifying shareholder. Whether an intermediary itself satisfied the separate concern limb was not the controlling basis of the decision.

For block-assessment jurisdiction, the diary was the starting point of connected enquiries that exposed the circular movement of funds. The Court found that the undisclosed deemed-dividend income was detected wholly through the search and those enquiries, rather than through an independent scrutiny assessment, survey or outside information. The cash-flow chart revealed the connection between five payments and the bond investment. The Court therefore sustained use of historical Chapter XIV-B; it did not say that any later examination of disclosed accounts automatically permits a block addition (physical 15-16/SCR 1118 E-1119 B, paragraph 12).

On the merger objection, the Court accepted that the two companies' accounts had merged and that reserves should be considered on the merged basis. It also stressed the assessee's interest in MKSEPL from inception and the block period under review. This was a decision on the stated merger, timing and assessment facts, not a complete account of later statutory amalgamation rules (physical 16/SCR 1119 C-D, paragraph 13).

Finally, the Court quoted *Nandlal Kanoria* and *P.K. Badiani* and adopted the need to examine the nature of each payment together with the accumulated profits available on its date. A year-end balance alone was not a substitute for that correlation. The Tribunal had made that correlation and its finding that the routed money benefited the assessee was not perverse; the High Court should not have displaced it (physical 16-18/SCR 1119 E-1121 E, paragraphs 14-16). The embedded older-law quotation is background to the Court's application of section

02 DISCUSSION BY THE HON'BLE COURT

2(22)(e), not a separate adjudication under the 1922 Act.

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

03 JUDICIAL DECISION

The Court upheld the Revenue's position on the Rs. 5.99-crore shareholder-benefit payment, the search-based block assessment and the Tribunal's nonperverse findings. It set aside the High Court judgment and allowed Civil Appeal 1873 of 2007. That removed the High Court's reversal of the Tribunal; no fresh assessment or remand was ordered, and no separate ruling on the entire block-income quantum was made (physical 18/SCR 1121 D-F, paragraphs 16-17).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue, on the Rs. 5.99-crore deemed-dividend addition and historical block-assessment jurisdiction

Civil Appeal No. 1873 of 2007 allowed; Calcutta High Court judgment set aside

Substantive shareholder-benefit application, reasoned historical search-assessment jurisdiction and protection of nonperverse factual findings

The traced Rs. 5.99-crore payment on these facts, not every company-to-firm transfer, the whole bond investment or entire block-income quantum; no blanket immunity for Tribunal findings or present-law merger rule

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

05 AKHB REVIEW POINT

Start with the precise limb of section 2(22)(e) and the payment trail. A company-to-firm transfer is not enough by itself. The decisive features were the qualifying shareholder, the company's accumulated profits, the closely timed movement of money, the personal bond purchase, and the unsupported repayment explanation. The 2011 compilation preserves distinct shareholder, concern and individual-benefit routes; its Explanation 3(b) uses a twenty-per-cent threshold for substantial interest in a non-company concern. The Court's 16% MKF recital should therefore not be used to lower that separate statutory threshold (physical 54-56/printed 1.13-1.15).

The appellate limit is equally fact-dependent. Sudarshan Silks and Sarees (11 April 2008), paragraph 15, later cited Mukundray through the T. Ashok Pai discussion in support of respect for Tribunal findings; it operated in section 256 reference jurisdiction. No present penalty or mens rea proposition is drawn from that later quotation. In Principal Commissioner of Income Tax - 7 v. Bikram Singh (Delhi High Court, 25 August 2017), paragraph 37 expressly distinguished Mukundray: its protected findings had been nonperverse, whereas the section 68 case before the High Court involved legally erroneous treatment of the evidence. Paragraphs 41-44 set aside the Tribunal's deletion of four additions. This is a later factual/jurisdictional distinction, not an overruling of the shareholder-benefit ratio or an absolute bar on judicial fact-review.

Use the block-assessment conclusion only with the historical search nexus and statutory version. The retained 2011 compilation reproduces the former Chapter XIV-B definitions and the section 158BI cut-off for searches/requisitions after 31 May 2003. A later scheme using similar section numbers cannot be assumed to carry the same conditions. The merger observation likewise does not replace a separate check of later amalgamation-profits amendments: the targeted search did not produce authenticated enacted text for the identified later amendment lead. No post-2007 merger rule is certified. Comprehensive later treatment, complete amendments/commencement/savings, current applicability and Income-tax Act 2025 mapping remain not_verified.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1873 of 2007

Outcome: Revenue appeal allowed; High Court reversal removed; no remand

Costs: No order as to costs

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, corrected appeal label, AY and block period

Source url: [Open cited source](#)

Pdf pages: 1; 6; 7

Paragraphs: Heading; paragraphs 1-3; SCR 1109 D-1110 H
2.

Topic: CIT(A), Tribunal and High Court positions

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11

Paragraphs: Paragraphs 4-7; SCR 1111 F-1114 F
3.

Topic: Assessee arguments and statutory purpose

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13; 14

Paragraphs: Paragraphs 8-11; SCR 1114 F-1117 F
4.

Topic: Shareholder-benefit tracing and search nexus

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: Paragraph 12; SCR 1117 G-1119 B
5.

Topic: Merged reserves in historical block facts

Source url: [Open cited source](#)

Pdf pages: 16

Paragraphs: Paragraph 13; SCR 1119 C-D
6.

Topic: Per-payment correlation, fact-review limit and exact disposition

Source url: [Open cited source](#)

Pdf pages: 16; 17; 18

Paragraphs: Paragraphs 14-17; SCR 1119 E-1121 F
7.

Topic: Later citation in section 256 fact-review context

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12

Paragraphs: Paragraphs 12-17; SCR 464 E-467 C
8.

Topic: Direct later High Court distinction and its bounded outcome

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23; 24; 25

Paragraphs: Paragraphs 37 and 40-44

9.

Topic: Distinct statutory limbs and twenty-per-cent concern threshold

Source url: [Open cited source](#)

Pdf pages: 54; 55; 56

Paragraphs: Printed 1.13-1.15; section 2(22)(e), Explanations 2-3

10.

Topic: Historical search-assessment definition and 2003 cut-off

Source url: [Open cited source](#)

Pdf pages: 749; 750; 758

Paragraphs: Printed 1.708-1.709,1.717; sections 158B and 158BI

HISTORICAL BLOCK PERIOD

Start: 1990-04-01

End: 2000-08-24

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Actual shareholder-benefit deemed dividend and historical Chapter XIV-B assessment, with limits on interference with nonperverse Tribunal findings. Section 158B(b)/158BB(1) are specifically invoked in counsel's jurisdiction argument. Section 143(3) occurs in the procedural account. The quoted section 2(6A)(e) belongs to the earlier legislation discussed in P.K. Badiani; it is not the governing provision in this appeal.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 18 PDF pages; SHA-256
d619cb4e7a382e864aff96a1a4dc9df342cb0b44c645755e692c733809678c60. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; source integrity verified: True;
actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status:
not_verified; statutory mapping 2025: not_verified

Source heading/date and SCR reference checked on images; catalogue INSC identifier not independently authenticated.

Frozen metadata calls this Civil Miscellaneous Petition 1873/2007; judicial recital says Civil Appeal 1873/2007. The original source remains unchanged.; Heading spells Mukundray; paragraph 2 uses Mukundrai. Both identify the same respondent; title follows the heading.; Search premises are described generally as the assessee's in paragraph 3 and specifically as MKSEPL's when explaining the diary seizure. Both descriptions are retained without inventing a separate search.; Paragraph 3 dates the search 24 August 2000 but describes statements recorded on 16 November 2000 as during the search. The source supplies no explanation for that chronology; no continuous or additional search is inferred.; Physical 14/SCR 1117 prints Rs.75 in counsel's account; physical 10/SCR 1113 explicitly prints Rs.75 lakhs. The reasoned aggregate is Rs.2.79 crores plus Rs.3.20 crores. No new standalone Rs.75 transaction is inferred.; The approximately 16% MKF recital does not alter the statutory twenty-per-cent concern threshold. This ratio rests on the qualifying shareholder's individual benefit.; Rs.26.35 crores is total bond investment; Rs.5.99 crores is the disputed deemed dividend. Rs.94 lakhs from MKTPL and Rs.65.77 crores block income are not independent additions upheld by this appeal.; The Court's anti-avoidance explanation is not a mandatory-dividend declaration rule. The merger finding is case-specific and historical. Paragraph 16's payment/accumulated-profits correlation is not an exhaustive list of all section 2(22)(e) conditions.; DHC later source prints Section222(e) in paragraph37; the actual provision is section2(22)(e), verified from the Supreme Court source.; Departmental section2-64 retrieval was denied403 and stopped. Finance2018 Gazette fetches timed out without retained text. Search snippets were discovery leads only, not proof of an enacted amendment or current law.

Impugned payments arose in FY 1999-2000/AY 2000-01. The expressly stated block is 1 April 1990 to 24 August 2000; this is not confined to a single-year regular assessment.

Physical 6/SCR 1109 expressly identifies Civil Appeal 1873 of 2007 from Calcutta High Court GA 321/2005 and ITA 21/2005, judgment 12 May 2005. Frozen catalogue mislabels it a Civil Miscellaneous Petition. No separate proceeding or outcome is inferred from that error.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 crosswalk. Complete amendments, commencement, savings and case-specific present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. not_verified

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 18](#)

SHA-256: d619cb4e7a382e864aff96a1a4dc9df342cb0b44c645755e692c733809678c60

[later reported judgment bounded - PDF pages: 12](#)

SHA-256: 7dfd871bd3409abb8815ab8403c7a1ff3119c264595effbf8b50bdf2ffb932b9

[official high court judgment bounded later distinction - PDF pages: 25](#)

SHA-256: d4706d05b06ac7c5495bcc005f7258f259b8daef7c4de82f68a677ff2a31cfc6

[official government hosted historical compilation bounded - PDF pages: 1251](#)

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