

Gopal and Sons (HUF) v. Commissioner of Income Tax, Kolkata-XI

Civil Appeal No. 12274 of 2016

[2017] 1 SCR 86 | 2017-01-04

Whether advances received by an HUF could be taxed as deemed dividend under section 2(22)(e) where share certificates stood in its Karta's name, the HUF funded the shares, and the Karta had the requisite substantial interest in the recipient HUF.

2(22)(e) | Explanation 3(a) and (b) to section 2(22)(e) | 253, procedural history

Two-judge bench | A.K. Sikri, J. | Abhay Manohar Sapre, J.

Assessment years: 2006-07

HUF concern facts and limits of later-treatment verification

This result depends on the HUF/Karta facts and undisputed 20% income entitlement; it is not a blanket rule for every non-shareholder recipient. National Travel 2018 did not name or overrule Gopal: it made a prima facie referral after recording Madhur Housing's affirmation of Ankitech. Its CA 2068-2071/2012 were later withdrawn under Vivad se Vishwas, as shown by a separately read third-party order reproduction; that is no merits resolution and does not establish CA 837/2018's outcome. Gopal's own review dismissal was checked in official web text only. No comprehensive subsequent-treatment, current-law or 2025 mapping certification is made.

01 FACTS OF THE CASE

The assessee was an HUF. For AY 2006-07 it returned total income of ₹1,62,745. The Assessing Officer's order of 31 December 2008 computed net income at ₹1,30,31,280 through several additions. Only the deemed-dividend addition of ₹1,20,10,988 remained in controversy before the Supreme Court. Other additions had been deleted by the Tribunal, those deletions were affirmed by the High Court, and Revenue did not challenge them (paragraphs 2-4, physical 3-4).

During the relevant previous year the HUF received advances from G.S. Fertilizers (P) Ltd., a manufacturer and distributor of NPK fertilizers and other agricultural inputs. The company's subscribed capital was ₹1,05,75,000, divided into 10,57,500 shares of ₹10 each; 3,92,500 shares, representing 37.12%, were subscribed by the HUF. The company's audited accounts showed ₹1,20,10,988 as reserves and surplus at 31 March 2006, and that sum was brought to tax as deemed dividend. The judgment does not separately quantify the gross advances, so the addition/reserve figure should not automatically be described as the total loan (paragraph 4, physical 4).

The HUF challenged its shareholder status. Share certificates had been issued in the name of Shri Gopal Kumar Sanei, its Karta, and the HUF argued that it could be neither a registered nor a beneficial shareholder. The Commissioner (Appeals) relied on the company's annual return and shareholder register, which recorded the HUF and its 37.12% holding. The Tribunal allowed the HUF's appeal by following Binal Sevantilal Koradia (HUF), which treated registered and beneficial shareholding as twin conditions unavailable to an HUF. On Revenue's appeal the Calcutta High Court reversed that result and restored the addition, referring to the Karta's membership of the recipient HUF. The Supreme Court challenge was confined to the shareholder-status argument (paragraphs 5-10, physical 4-6).

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

02 DISCUSSION BY THE HON'BLE COURT

Section 2(22)(e) creates a tax fiction: an advance or loan repayable to the company is not an actual dividend, but the provision may deem it one. The Court therefore required strict interpretation, fulfilment of every applicable statutory condition, and the benefit of doubt to the assessee where two interpretations were possible. This interpretative principle did not itself defeat the addition on the facts found (paragraph 12, physical 7).

The statutory extract addressed a company in which the public are not substantially interested; advances or loans after 31 May 1987 to a shareholder beneficially owning the specified shares with at least 10% voting power; and payments to a concern in which such shareholder is a member or partner with a substantial interest. The fiction is limited to accumulated profits. Explanation 3 expressly includes an HUF within "concern" and treats a person as substantially interested in a non-company concern if beneficially entitled at any time in the previous year to at least 20% of its income (paragraph 6, physical 5). Paragraph 13's general three-category description must be read with that actual statutory text and the concern analysis that follows; it is not an exhaustive deletion of the concern limb.

For the issue before it, the Court focused on payment by advance or loan to such a concern, substantial interest of the shareholder in that concern, and the post 31 May 1987 timing. The shares were held by the HUF's Karta; he was a member of the HUF, and it was undisputed that he was entitled to at least 20% of its income. On those facts section 2(22)(e) applied. Paragraph 16 expressly said it was unnecessary to determine in the abstract whether an HUF could legally be a registered or beneficial shareholder. The result should therefore not be expanded into a presumption that every Karta automatically has the 20% entitlement, independently of the facts (paragraphs 14-16, physical 8).

The Court separately recorded that the HUF supplied the share-subscription money, certificates stood in the Karta's name, and annual returns showed the HUF as registered and beneficial shareholder. It regarded beneficial ownership as beyond doubt. Even assuming the HUF was not registered, payment to it fell within the concern limb because the shareholder was its member with a substantial interest. These distinct evidentiary propositions, and the alternative reasoning, should be retained rather than collapsed into a simple statement that the HUF was conclusively registered or that recipient registration never matters in any case (paragraph 17, physical 8-9).

C.P. Sarathy Mudaliar did not govern this result: it concerned section 2(6A)(e) of the 1922 Act, which lacked a provision corresponding to Explanation 3. The Court distinguished that earlier statutory setting; it did not overrule every registered-shareholder principle irrespective of statutory language or transaction (paragraph 17, physical 9).

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

03 JUDICIAL DECISION

The Supreme Court found no merit in the HUF's confined shareholder-status challenge and dismissed Civil Appeal 12274/2016. The ₹1,20,10,988 deemed-dividend addition restored by the High Court therefore stood. Paragraph 18 contains no express costs direction; "no costs" is not supplied by inference (physical 9).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the disputed deemed-dividend addition

Assessee appeal dismissed

Final reasoned application of section 2(22)(e) and Explanation 3 to the HUF/concern facts

Confined shareholder-status challenge for AY 2006-07; no adjudication of other deleted additions, every statutory exception, gross loan amount, universal HUF shareholding capacity or comprehensive present-law position.

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

05 AKHB REVIEW POINT

Identify the payment recipient, the actual shareholder, beneficial ownership, voting power and the shareholder's income entitlement in the recipient concern separately. Gopal's decisive combination was an HUF funded holding, certificates in its Karta's name and an undisputed entitlement to at least 20% of HUF income. Its strict-construction passage remains important, but it does not dispense with the concern limb. Nor should the paragraph 17 alternative be turned into an unrestricted rule taxing every non-shareholder recipient.

The later shareholder controversy requires a qualified comparison. National Travel Services (18 January 2018), involving a partnership firm and shares held by two partners for it, records the Supreme Court's 5 October 2017 Madhur Housing affirmation of Ankitech, then takes a prima facie different view and refers the wider question to an appropriate three-judge bench. It neither names Gopal nor finally resolves the merits. The subsequently reproduced 10 August 2021 order dismisses Civil Appeals 2068-2071/2012 as withdrawn under the Direct Tax Vivad se Vishwas Act 2020. That is a withdrawal, not a larger-bench determination; the status of connected Civil Appeal 837/2018 is not established by that order. The Madhur Housing original has not independently been fully read for this note, so its treatment is stated as recorded in National Travel, rather than as a separately verified full holding.

The official web text of the 2 May 2017 order also shows that Gopal's own review petition 889/2017 was dismissed after condoning delay, without fresh substantive reasons. The bounded 2011 departmental compilation confirms the historical concern wording and amendment footnotes. These checks do not establish an exhaustive later-treatment history, current law or a 1961-to-2025 correspondence.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Costs: No express costs order in the primary judgment

Proceeding outcomes

1.

Case number: Civil Appeal No. 12274 of 2016

Originating court: Calcutta High Court

Lower court proceeding: ITAT No. 73 of 2014; order 13 February 2015

Appellant role: Assessee HUF

Outcome: Dismissed; High Court restoration of ₹1,20,10,988 addition remains undisturbed

Costs: No express costs direction

Pinpoint: Physical 3-4 and 9; paragraphs 3-5 and 18

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES**1.****Topic:** Identity, year, amounts and confined appeal**Source url:** [Open cited source](#)**Pdf pages:** 1; 3; 4**Paragraphs:** cover; paragraphs 1-5**Source role:** mixed identity metadata and judicial text**2.****Topic:** Historical clause and Explanation 3**Source url:** [Open cited source](#)**Pdf pages:** 5**Paragraphs:** paragraph 6**Source role:** judicial text**3.****Topic:** Appellate history and strict interpretation**Source url:** [Open cited source](#)**Pdf pages:** 5; 6; 7**Paragraphs:** paragraphs 7-13**Source role:** judicial text**4.****Topic:** HUF concern rationale and final dismissal**Source url:** [Open cited source](#)**Pdf pages:** 8; 9**Paragraphs:** paragraphs 14-18**Source role:** judicial text**5.****Topic:** Related shareholder controversy and referral**Source url:** [Open cited source](#)**Pdf pages:** 4; 9; 10; 11**Paragraphs:** paragraphs 3-4, 13-20**Source role:** bounded later judicial text**6.****Topic:** Historical statutory wording and Finance Act 1987 footnotes**Source url:** [Open cited source](#)**Pdf pages:** 54; 55; 56**Paragraphs:** section 2(22)(e); Explanation 3**Source role:** historical statute

7.

Topic: Gopal review dismissal

Source url: [Open cited source](#)

Pdf pages:

Paragraphs: complete official web-extracted order and ROP; no images verified

Source role: bounded later judicial text

Web reported physical positions: 1; 2

8.

Topic: Withdrawal of CA 2068-2071/2012 only

Source url: [Open cited source](#)

Pdf pages:

Paragraphs: webpage lines 44-62, complete reproduced order/ROP

Source role: third party primary text reproduction

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A.K. Sikri, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Income-tax Act 1922, section 2(6A)(e), distinguished historical predecessor; Companies Act, shareholder-register context; no separate Companies Act holding

SPECIFIED COMPARISONS AND THEIR VERIFICATION LIMITS

1.

Status: verified bounded

Subject: Own review dismissal; official web text only

Source url: [Open cited source](#)

Pdf pages:

Web reported physical positions: 1; 2

2.

Status: verified bounded

Subject: Related 2018 referral, no direct Gopal treatment

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11

3.

Status: verified bounded reproduction

Subject: 2021 withdrawal; only CA 2068-2071/2012

Source url: [Open cited source](#)

Pdf pages:

4.

Status: verified bounded

Subject: Historical section 2(22)(e)/Explanation 3

Source url: [Open cited source](#)

Pdf pages: 54; 55; 56

BOUNDED NON-PDF SOURCES AND READING LIMITS

1.

Kind: later primary order third party text reproduction

Title: National Travel Services v. Commissioner of Income Tax, 10 August 2021

Url: [Open cited source](#)

Full bounded judicial text read: True

Reviewed boundary: Entire reproduced order and record of proceedings, webpage lines 44–62: IA 46492/2021 allowed; Civil Appeals 2068–2071/2012 dismissed as withdrawn in light of the Direct Tax Vivad se Vishwas Act 2020. No merits ruling or outcome of connected Civil Appeal 837/2018 is established.

Physical text pages read:

Physical image pages read:

Provenance: Primary judicial order read in full as third-party HTML reproduction. No official raw PDF, signature/image authentication, physical page count or original-PDF hash is claimed.

PDF TEXT-ONLY SOURCE CHECKS AND READING LIMITS

1.

Kind: official later primary order web text

Title: Gopal and Sons (HUF) v. CIT Kolkata-XI, Review Petition (Civil) 889/2017, 2 May 2017

Url: [Open cited source](#)

Full bounded judicial text read: True

Reviewed boundary: Entire official web-extracted order text and record of proceedings, web-reported positions 1–2, lines 0–40; delay condoned and review dismissed. No further substantive reasoning or costs direction stated.

Physical text pages read:

Physical image pages read:

Provenance: Official Supreme Court endpoint successfully read as web-extracted text. The separate raw response was not a valid PDF and screenshots were unavailable, so no retained original PDF, raw hash or image verification is claimed.

Web reported pdf pages: 2

Web text pages read: 1; 2

Web reported physical positions: 1; 2

Source format: Official Supreme Court PDF, web-extracted text only

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 9 PDF pages; SHA-256
c44e3b57c2512a21515dd2a7fd1340e5754c8ed8ccfa2203a4bc77dffce38540. Original bytes preserved.
Judicial paragraphs 1-18 from physical 3/SCR 88 to physical 9/SCR 94; physical 1-2 and opening physical 3 are reporter/headnote/metadata. One A.K. Sikri judgment, no separate opinion or adjacent judgment.

Open cited source rendition

full primary text read: True; all primary page images reviewed: False; material primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; all authored opinions separately accounted for: True; material later treatment limits prominent: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

The present appeal concerns AY 2006-07 only. AY 2007-08 appears in the footnote identifying the separate Binal Sevantilal Koradia Tribunal decision, not as another year of this assessee.

Cover and judicial metadata agree on Civil Appeal 12274/2016; appeal from Calcutta High Court order 13 February 2015 in ITAT 73/2014. The separately checked later review is RP (C) 889/2017 in this appeal, decided 2 May 2017; it is not a second proceeding decided by the present judgment.

The source is a preserved public-mirror eSCR PDF, not a separately authenticated signed original. Reporter summaries are separated from judicial paragraphs.; Company register/annual-return findings, certificates in the Karta's name and HUF beneficial funding are different facts; paragraph 16 leaves abstract HUF legal capacity undecided.; ₹1,20,10,988 is the addition and reported reserves/surplus; gross advances are not separately quantified. Other additions were outside the Revenue challenge.; Gopal review is official web-text only; National Travel 2021 withdrawal is a third-party text reproduction. No PDF/image authentication is claimed for those two checks.

STATUTORY SCOPE

No comprehensive present-law certification or automatic correspondence between the Income-tax Acts of 1961 and 2025. Apply the statutory version and temporal rules relevant to the transaction or proceeding.

LATER TREATMENT

Source checked 2026-10-05. Bounded checks: own review dismissed 2 May 2017; related National Travel 2018 referral, its report of Madhur Housing/Ankitech and reproduced 2021 withdrawal of CA 2068-2071/2012. National Travel does not expressly cite or overrule Gopal, and no resolved larger-bench merits ruling or CA 837/2018 disposition is established. Comprehensive later treatment remains not_verified.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 9

SHA-256: c44e3b57c2512a21515dd2a7fd1340e5754c8ed8ccfa2203a4bc77dffce38540

bounded auxiliary primary source - PDF pages: 11

SHA-256: c02280725a655d5b9aadb171aa49d8f9a653047ceddef580125c2a0e56dbc974

bounded auxiliary primary source - PDF pages: 1251

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

Gopal and Sons (HUF) v. CIT Kolkata-XI, Review Petition (Civil) 889/2017, 2 May 2017

National Travel Services v. Commissioner of Income Tax, 10 August 2021**AI DISCLOSURE**

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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