PATNA HIGH COURT

Commissioner of Income-Tax

Vs

Sahu Jain Ltd

M.J.C. No. 102 of 1962. and M.J.C. No. 103 of 1962

(S.C. Mishra, C.J. and S.N.P. Singh, J.)

14.03.1969

JUDGMENT

S.C. Mishra, C.J.

1. These two references relate to the assessment years 1953-54 and 1954-55 in which the assessee-company was held by the Income-tax Appellate Tribunal, Calcutta Bench "E", Calcutta, as not liable under Section 23A for the year 1955. The company is incorporated under the Indian Companies Act, with the following shareholders:
Name No. of shares

1.	Shri Ashok Kumar Jain (managing director), minor son of Shri Shanti Prasad Jain	10,000
2.	Shri R. Sharma (director)	10
3.	Shri N. C. Jain (director)	10
4.	Shri Shanti Prasad Jain (father of the managing director)	10,000
5.	Shrimati Rama Jain (wife of Shri Santi Praaad Jain)	10,000
6.	Shri Alok Prakash Jain (son of Shri Shanti Frasad Jain), minor, up to 26-10-53	10,000
7.	Rishabh Investment Ltd. 5,000	
8.	Dalraia Jain & Co. Ltd.	2,000
9.	Universal Bask of India Ltd.	980
10.	Ashbka Agencies Ltd.	2,000
		50,000

		50,000 shares of ₹ 10 each, fully paid.

2. The point for consideration before the Income-tax Officer was whether the provisions of Section 23A would be applicable to the dividends earned by this company. "Section 23A-company" has been defined under Section 23A(1) and if the conditions specified therein are fulfilled in relation to the affairs of a company, the undistributed dividends are deemed to have been notionally distributed to the shareholders in accordance with the quantum of their shares and taxable as part of their total income. But this provision does not apply to a company the shares of which (not being shares entitled to a fixed rate of dividends whether with or without a further right to participate in profits), carrying not less than 25 per cent. of the voting power, have been allotted unconditionally to or acquired unconditionally by and are at the end of the previous year beneficially held by the public (not including another Section 23A-company). Secondly, the shares of the company should have been at any time during the previous year the subject of dealings in any recognised stock exchange in India or be freely transferable by the holder to other members of the public. The main question for consideration, in these proceedings throughout, was whether the opposite-party-company could be deemed to be a company in which the public are substantially interested within the meaning of the Explanation to Section 23A(1), The Income-tax Officer, on a consideration of the materials on record, decided that the assessee-company could not be regarded as a company 25 per cent. of whose shares were held unconditionally or beneficially by the public. The reasoning adopted by the Income-tax Officer, approved on appeal by the Appellate Assistant Commissioner, Income-tax, Patna Range, was that the company, in substance, was a one-man company or a controlled company as all the shareholders were under the control of Shri Shanti Prasad Jain, who was originally the managing director, holding 10,000 shares. Shri Ashok Kumar Jain was originally a minor, holding 10,000 shares under the guardianship of his father, Shri Shanti Prasad Jain. Shri Alok Prakash Jain was also a minor son of Shri Shanti Prasad Jain holding 10,000 shares and under his guardianship. Shrimati Rama Jain, being the wife of Shri Shanti Prasad Jain, holding 10,000 shares, was also under his control. Out of 50,000 shares, 40,000 shares were thus held by members of the same family. The other two minor shareholders, Shri R. Sharma and Shri N. C. Jain, were also employees of Shri Shanti Prasad Jain. Shri Rishabh Investment Ltd. and Dalmia Jain Co. Ltd. were held to be Section 23A companies, and Universal Bank of India Ltd., and Ashok Agencies Ltd. were also primarily under the control of Shri Shanti Prasad Jain. In order to come to the conclusion that the company in question is a company exempt from the restricting provisions of Section 23A of the Act, at least 12.500 shares of the company must be held by the public. The assessee contended that the various shareholders must be held to be independent of one another, and members of the family of Shri Shanti Prasad Jain must not be lumped together as being under the control of Shri Shanti Prasad Jain. The Income-tax, Officer, in his original order, dated the 25th of September, 1957, proceeded on the footing that, since, at least, 40,000 shares were held by a number of close relations of the managing director, they could not be regarded as

shares held by the public.

3. On appeal, however, the Appellate Assistant Commissioner set aside the order of the Income-tax Officer on the authority of the case of *Raghuvanshi Mills Ltd. v. Commissioner of Income-tax*[1], in which it has been laid down that the mere fact that a shareholder is a relative of the director would not make such a shareholder ipso facto a person under the control of the director thus ceasing to be a member of the public. Reference was also made to the cases of *Jubilee Mills Ltd. v. Commissioner of Income-tax*[2], and *Commissioner of Income-tax v. H. Bjordal*[3], The case was remanded accordingly to the Income-tax Officer for a fresh finding. The Income-tax Officer, on this occasion, found a few more facts as follows :

> (i) One of the shareholders, Shri Alok Prakash Jain, was a minor throughout the period under consideration, and could not have, therefore, acted independently. His voting power was, therefore, obviously controlled by his parents, Shri Shanti Prasad Jain and Shrimati Rama Jain, each holding 10,000 shares.
> (ii) The managing director, Shri Ashok Kumar Jain, holding 10,000 shares, was himself a minor for the full first year and for a major portion of the second year, and could not have, therefore, acted independently. His voting power was also, therefore, obviously controlled by his parents, Shri Shanti Prasad Jain and Shrimati Rama Jain, each holding 10,000 shares.
> (iii) Shri Shanti Prasad Jain, holding 10,000 shares, Shri Ashok Kumar Jain, holding 10,000 shares, Shri R. Sharma, holding 10 shares, and Shri N. C. Jain, holding 10 shares were original signatories to the memorandum described as original subscribers desirous of being formed into a company in pursuance of the memorandum of association dated the 15th July, 1950.
> (iv) The directors of the company were mere nominees of the three controlling shareholders, and the three controlling shareholders were acting in concert with the directors.

4. The Appellate Assistant Commissioner substantially approved the reasoning of the Income-tax Officer. Shri Shanti Prasad Jain, being one of the original promoters of the company, could not be looked upon as a member of the public. The persons who floated a company and then invited members of the public to join the company cannot themselves, be described as members of the public, they being the original proprietors desirous of being formed into a company. The word "public" in Section 23A-is not merely in contradistinction to the directors but also in contradistinction to the original promoters of the. company. Shri Shanti Prasad Jain, therefore, must be excluded from the category of members of the public as contemplated under the Explanation to the third 'proviso to Section 23A of the Act. Shri Shanti Prasad Jain was the real and effective owner of the company. The managing director being a minor son, holding 10,000 shares, his vote was also controlled by his father, Shri Shanti Prasad Jain. The vote of the other minor son, Shri Alok Prakash Jain, was also controlled by his father. Shrimati Rama Jain also must be held to be acting in concert with her husband. Apart from the fact of relationship, reference was also made to two transactions : (i) in hessian and (ii) in Indian Iron shares between the company, which was under the control of Shri Shanti Prasad Jain, and Shrimati Rama Jain,

his wife. In the former transaction through Messrs. Kabra & Co., the company incurred a loss of ₹ 2,02,500, and Shrimati Rama Jain made a profit of ₹ 2,02,500 and, in the latter transaction through Messrs. Bagla & Co., the assessee-company incurred a loss of ₹ 22,563, and Shrimati Rama Jain made a corresponding gain. The Income-tax Officer described this coincidence as a step on the part of the managing director of the company so that Shrimati Rama Jain might make a personal profit at the cost of, the company. Reference was also made to the fact that Shri Ashok Kumar Jain was made managing director on a salary of ₹ 6,000 per month at a time when he was still a minor, and this could not be so if he was not the son of Shri Shanti Prasad Jain who happened to be in control of the voting power of the shareholders--the entire family holding 80 per cent. of the share capital of the company. It is not necessary to set out other facts: it is sufficient to state that, in the circumstances, it could not be held that the requisite condition under the Explanation to Section 23A that the shares carrying not less than 25 per cent. of the voting power should be held by members of the public in order to take the case out of the provisions of Section 23A was satisfied. The assessee, therefore, could not be regarded as a company in which the public was substantially, within the meaning of the Explanation to Section 23A, interested. The provisions of Section 23A were, therefore, rightly applicable.

5. On an appeal being preferred by the assessee before the Income-tax Appellate Tribunal, the decision of the Appellate Income-tax Commissioner was set aside. In regard to the assessment year 1952-53, it was held by the Tribunal that, since Sri Ashok Kumar Jain and Shri Alok Prakash Jain were both minors, each holding 10,000 shares under the guardianship of their father, Shri Shanti Prasad Jain, the voting power in respect of these shares must be held to have been beneficially held by Shri Shanti Prasad Jain. He must be held, therefore, to be in control of, at least, 30,000 shares. There was no finding that Shri Shanti Prasad Jain provided the consideration for the acquisition of the shares. Even treating Shrimati Rama Jain and Rishabh Investment Ltd. as members of the public, their total holding would come to 12,000 shares only and, in that view of the matter, the assessee-company could not be regarded as a company which will be exempt under the Explanation to Section 23A from the liability to have the dividends declared by the income-tax authorities in the individual names of the various shareholders. For the remaining two years, however, the Tribunal upheld the contention of the assessee that there was nothing on the record to show that Shri Ashok Kumar Jain, alter attaining majority, was under the control of his father, and that he provided the consideration money to him to purchase his share as also to Shrimati Rama Jain to purchase her shares. In the circumstances, it must be held that they were members of the public, and that, at least, the shares of Shrimati Rama Jain and Shri Ashok Kumar Jain, who held 20,000 shares, should be added to the 2,000 shares held by Ashoka Agencies Ltd. which was not a Section 23A company which will make up 22,000 shares held by the public.

6. The Commissioner of Income-tax applied thereafter to the Income-tax Appellate Tribunal for stating a case to the High Court under Section 66(1) of the Act arising out of the order of the Tribunal, dated the 26th January, 1961, in I.T.As. Nos. 7407 and 7408 of 1959-60. The Tribunal was satisfied that a question of law did arise out of the order in question on the facts in those cases which are common. The two applications were consolidated, and a statement of case was drawn up and referred to this court. The question referred to by the Tribunal stands as follows:

"Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the provisions of Section 23A of the Income-tax Act were not applicable to the assessee-company for the assessment years 1953-54 and 1954-55 ?"

7. This court, however, by order dated the 9th of December, 1965, on a consideration of the two important cases, *Raghuvanshi Mills Ltd. v. Commissioner of Income-tax*[4], and *Commissioner of Income-tax v. Jubilee Mills Ltd*[5]., held that the Tribunal did not apply the correct test in finding out whether the assessee-company fulfilled the requirements of the Explanation to Section 23A of the Act, to which the provisions of Section 23A would not be applicable. The finding of the Tribunal was based on the main reason that Shri Ashok Kumar Jain and Shrimati Rama Jain were not the nominees of Shri Shanti Prasad Jain; but the correct test to be applied, whether "the circumstances are such that they must be acting together", was not kept in view. Hence, the necessary finding of fact was wanting. Accordingly, a further question was formulated to be answered by the Tribunal to this effect:

"Whether, bearing in mind the principles laid down by the Supreme Court in *Raghuvanshi Mills Ltd. v. Commissioner of Income-tax*[6], and *Commissioner of Income-lax v. Jubilee Mills Ltd*[7]., Shrimati Rama Jain and Shri Ashok Kumar Jain, or either of them, could be safely taken to have acted in concert with Shri S. P. Jain during the years in question in respect of the affairs of the assessee-company."

8. The further direction was that the Tribunal might take additional evidence if it considers it necessary in order to enable it to state the supplementary case as directed above.

9. The Tribunal, however, once more came to the same conclusion as before. The finding of the Tribunal stands as follows:

"A perusal of the minutes of the proceedings of the general meeting does not lead to any inference that Shri S. P. Jain, Shrimati Rama Jain and Shri A. K. Jain were necessarily acting in concert. On the other hand, it appears that, despite his young age, Shri A. K. Jain seems to have been taking active interest in the management of the affairs of the assessee-company and the companies managed by it. Unless it is to be presumed that, because of relationship, Shri S. P. Jain, Smt. Rama Jain and Shri A. K. Jain should be regarded as acting in concert, there is no other material on record on the basis of which such a conclusion would be supported. So far as Shri A. K. Jain (second son) is concerned, he was a minor during the two previous years and the Tribunal had already held that voting power in respect of 10,000 shares
should be regarded as beneficially held by Shri S. P. Jain as the natural guardian."

10. If the finding recorded by the Tribunal in stating the supplementary case is to stand, it is clear that there is no ground for interference with the judgment of the Tribunal in favor of the assessee. Mr. Lalnarayan Sinha, appearing for the income-tax department, has urged that, although the answer returned by the Tribunal apparently relates to a question of fact and this court would accept it as binding and would not be competent to go behind it, the finding of fact, however, in

the circumstances of the present case, could not have any binding force for the High Court in the reference inasmuch as, in the present case, the Tribunal has hot answered the question which was referred to it for stating a supplementary case. The Tribunal has not reviewed the entire evidence because, in the first place, certain items of additional evidence were sought to be produced before the Tribunal which it refused to bring on record under the wrong impression in law that the High Court left it to the discretion of the Tribunal as to whether additional evidence would be taken, and, secondly, that the entire evidence was not considered by the Tribunal. Reliance was placed by the Tribunal on a decision of the Supreme Court in *Keshav Mills Co. Ltd. v. Commissioner of Income-tax*[8], which related to the statement of a supplementary case. It was held in that case that, in drawing up a supplementary statement of case, such material evidence as might be already on record but which had not been taken into account in the statement of the case initially under Section 66(1) alone should be included. Reference was also made to the case of *Zoraster and Co. v. Commissioner of Income-tax*[9], that, where the direction of the Tribunal is capable of more than one interpretation, the direction should be interpreted as requiring the Tribunal to consider the records of the case before the Tribunal and to draw up a supplementary statement thereon. Proceeding on this view, the Tribunal did not bring on record a number of documents which were produced before it by the Income-tax department, and confining the consideration to the evidence already on record, the Tribunal reaffirmed its previous conclusion that the department failed to establish by reliable evidence that Section 23A was attracted to the facts of this case, inasmuch as Shri Shanti Prasad Jain, Shrimati Rama Jain and Shri Ashok Kumar Jain were acting in concert. Mr. Lalnarayan Sinha has urged that the direction of this court was misunderstood by the Tribunal because it amounted to a clear direction to the Tribunal to take additional evidence to enable it to state the supplementary case and not to be confined to the evidence already on record which was considered by the Tribunal when the matter was referred to this court on the previous occasion, Mr. D. P. Pal, who has appeared on behalf of the assessee, has urged that the Tribunal was given full latitude by this court in the matter of taking additional evidence. If the court felt that it was open to the department to produce more documents before the Tribunal, it was open to it to do so. But the very words quoted above make it amply clear that discretion was left to the Tribunal in the matter of taking or not taking additional evidence. In any view, it was open to the Tribunal, on an interpretation of the direction if it was of an ambiguous nature, to consider the material already on the record of the case and not to let in additional evidence. The Tribunal, in the circumstances of the present case,
exercised its own judgment in disallowing the department from putting in other
documents than those which were already filed before the Income-tax Officer, on the ground that the Appellate Assistant Commissioner already remanded the case to the Income-tax Officer when the documents sought to be produced were in existence, and there was no reason why the documents now sought to be produced were not filed. It will be wholly unjust, in the circumstances, to give further latitude to the department to bring these matters on the record once again to fill up the lacuna. In my opinion, the argument urged on behalf of the assessee is well-founded. The matter is covered by the decision of the Supreme Court in the above case and, if the High Court gave a positive direction to the Tribunal to adduce more evidence, the direction should have been differently worded, apart from the fact that such a direction would have been incorrect in view of the decision of the Supreme Court in *Keshav Mills Co.'s case*[10], It could well have been said that the Tribunal should allow the department to bring on record more evidence if it desired to do so. That, however, was not the direction and, in the circumstances, if the Tribunal declined to bring on record more evidence, the view of the Tribunal cannot be challenged as running counter to the direction of this court. The Tribunal also referred to the decision as already

stated in the case of *Keshav Mills Co. Ltd, v. Commissioner of Income-tax*[11], in which it has been held that in calling for a supplementary statement of the case under section 66(4) of the Indian Income-tax Act, the High Court could not be acting within its power to require the Tribunal to collect additional material and make it a part of the supplementary statement. The judgment of their Lordships of the Supreme Court was pronounced on an elaborate consideration of several decisions of the Privy Council, the various High Courts and those of the Supreme Court itself. It was held that the principle of law laid down to apply to such a situation as ruled in *New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax*[12], and *Petlad Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax*[13], must be adhered to, because taking of additional evidence was confined to the stage of appeal and was covered by Section 31(2) of the Income-tax Act and Rule 29 of of the Appellate Tribunal Rules. So far as the exercise of jurisdiction in such matters by the High Court is concerned, it must be done within the limits of Section 66(4) of the Act and the High Court can direct the Tribunal to state a supplementary case only on foot of the materials already on record brought up by the parties before the proper authority. The Tribunal was, therefore, right in construing the direction of this court leaving it to the Tribunal to allow additional evidence to be let in. However, in law, it could not be done as laid down in the case of *Keshav Mills Co. Ltd.* and particularly because there was a remand once before by the Appellate Assistant Commissioner when additional evidence could well have been produced by the parties before the Income-tax Officer. That not having been done, the Tribunal thought it proper not to allow the department any further opportunity to bring on record additional evidence and it cannot be said that there was anything illegal in the view on which the Tribunal proceeded in the matter of taking of additional evidence.

11. Mr. Lalnarayan Sinha has urged in the next place that the finding of the Tribunal is perverse, inasmuch as apart from the relationship between Shri Shanti Prasad Jain
and his wife, Shrimati Rama Jain, and his two sons, Shri Ashok Kumar Jain and Shri Alok Prakash Jain, two circumstances, which were taken into consideration both by
the Income-tax Officer and the Appellate Assistant Commissioner could but lead to the only conclusion that Shri Shanti Prasad Jain allowed the interest of the company to suffer in the. speculative transactions of hessian and Indian Iron, referred to above, in favor of Shrimati Rama Jain, causing detriment to the interest of the company. Mr. Pal, however, has urged in reply that the finding returned in the case by the Tribunal is purely a question of fact, having taken into consideration all these circumstances, and it cannot be interfered with on the ground of its being perverse. What is a perverse finding of fact has been considered in the following decisions : *Bhikamchand Bagri v. Commissioner of Income-tax*[14], *Venkataswami Naidu (G.) and Co. v. Commissioner of Income-tax*[15], and *Edwards v. Bairstow*[16], In the case of *Edwards v. Bairstow Lord Simonds*[17], observed that even a pure finding of fact may be set aside by the court "if it appears that the Commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained". Lord Radcliffe stated that no misconception may appear on the face of the case but "it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court may intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination". According to this case, only in the circumstances aforesaid could a finding of fact be interfered with by the High Court in a reference under Section 66(1) of the Income-tax Act. Mr. Pal has urged that only when the inference drawn by the Tribunal cannot reasonably follow the facts found, so that no reasonable body of men can come to that finding, can it be

considered as perverse by the High Court and interfered with and set aside. That is not the position in the present case, and hence the finding of fact recorded by the Tribunal cannot be characterized as perverse. The argument of Mr. Pal must be acceded to in the circumstances of the case.

12. Mr. Lalnarayan Sinha has also contended that in any case, the finding is a mixed question of law and fact, and this court can draw its own inference upon the facts proved. Mr. Pal, however, has urged that there is no principle of law involved in drawing the inference in the present case as to whether the four shareholders, referred to above, were acting in concert or were not so acting. There is no question of legal inference, and, hence, the contention that it gives rise to a mixed question of law and fact cannot be accepted. Mr. Lalnarayan Sinha has, however, also contended that the finding of the Tribunal should be set aside as the several important facts in the case have not at all been referred to in the statement of the case by the Tribunal, and they are ;

(i) Whether Shri Shanti Prasad Jain was the original signatory.

(ii) A fresh consideration was called for in respect of all the factors, including those which were considered before.

(iii) Gain to the lady and loss to the company in the matter of speculative transactions.

(iv) Minutes of the meetings of the board of directors not considered.

(v) Shri Shanti Prasad Jain went out of the directorate, and his son came in.

(vi) Questions as to preverse finding cannot apply to a supplementary finding.

(vii) Where the High Court itself has formulated the test, the finding is a question of law and not a question of fact, as held in *Commissioner of Income-tax v. K.H. Chambers*[17A],

(viii) A misdirection or the part of the Tribunal is a point of law relating, as it does, to the understanding of the order of the High Court with regard to the tests to be followed in arriving at the finding.

13. Items (vi), (vii) and (viii) do not bear on non-consideration of facts.

14. In reply to this, Mr. Pal has referred to the cases of *G. Venkataswami Naidu (G) and Co. v. Commissioner of Income-tax*[18], and *Sri Meenakshi Mills Ltd. v. Commissioner of Income-tax*[19], for the proposition that acting intelligently is not a legal test, and, even if the Tribunal did not arrive at the correct conclusion, the finding of fact recorded by it must nevertheless be held to be binding on the High Court. He has also referred in this connection to the decisions in *Kshetra Mohan-Sannyasi Charan Sadhukhan v. Commissioner of Excess Profits Tax*[20], and *Rasipuram Union Motor Service Private Ltd. v. Commissioner of Income-tax*[21], Special stress has been laid on the decision of the Supreme Court in the case of *Bai Velbai v. Commissioner of Income-tax*[22], in which it has been held that a finding of fact does not alter its character as one of fact merely because it is itself an inference from other basic facts; but a finding on a question of fact is open to attack under Section 66 of the Indian Income-tax Act, 1922, as erroneous in law when there is no evidence to support it or if it is perverse or has been reached without due consideration of the several matters relevant for such a determination. Mr. Pal has urged further that it is not open to the learned counsel for the department to raise the question of the finding being perverse because, in that case, a clear question has to be formulated, and a statement of case asked for as to whether the finding is perverse or not. Mr. Lalnarayan Sinha has urged that that contention could only be applicable to a finding against which reference had been asked for in the first

instance; but, where, as in the present case, a perverse finding has been returned on a supplementary case, the necessity of formulating a regular question on the perverse nature of the finding cannot arise. That argument can only be raised in the course of the hearing. Mr. Pal relied upon the case of *Commissioner of Income-tax v. Greaves Cotton & Co, Ltd*[23].,. Mr. Lalnarayan Sinha has urged that, in that case too, it was held to be necessary to state, in clear terms, the objection of the aggrieved party as to the finding of the Tribunal being perverse only when that finding itself was the subject-matter of a reference. Where it is not so, as in the present case, it is open to the High Court to consider whether the finding is perverse or not, and, if it is satisfied that it is so, the High Court can record its own conclusion on the question.

15. Mr. Lalnarayan Sinha's contention that it is not necessary to take a specific ground in seeking for reference that the finding recorded by the Tribunal is perverse in the present case must be accepted as valid. Since, on behalf of the department, learned Advocate-General is contending that the finding of fact arrived at in the supplementary statement of case is perverse, this could not have been taken in the
ground which is confined to the prayer for a reference made to the High Court on behalf of the aggrieved party. The only point left for consideration, therefore, is whether the finding of fact is perverse in the sense that no reasonable body of men would have come to the conclusion to be arrived at by the Tribunal in the present case. In my opinion, the reasoning of the Tribunal cannot be regarded as perverse in that sense. It may be that in view of the relationship of the parties as to a group consisting of the father, two minor sons and their mother, a possible inference was that the relationship was such that they could reasonably be taken to be acting as a group in concert so that the shares held by them could not be regarded as shares held by the members of the family as a block. Since, however, it has been held by the Supreme Court in Raghuvanshi Mills' case, [1961] 41 I.T.R. 613 ; [1961] 2 S.C.R. 978, that the mere fact that the members of the family hold shares together in a company would not necessarily lead to the inference that they are acting in concert, unless there be proof of such acts on their part so as to support the inference of their acting as a group, no adverse inference can be" drawn against such shareholders of a company so as to apply to it the provisions of Section 23A of the Act. The Tribunal has approached the question from this angle and since onus to prove such acting lies upon the income-tax department as referred to by the Tribunal, relying upon the case of *Commissioner of Income-tax v. Gangadhar Banerjee and Co*[24]., and no evidence having been brought on record to that effect, the assessee could not be placed in the category of such company merely because of the close relationship of Shri S. P. Jain with Shri A. K. Jain and Shrimati Rama Jain. It is difficult to hold that the conclusion of the Tribunal, in the circumstances, is so perverse as to be set aside by this court.

16. Mr. Lalnarayan Sinha has further contended that, in any view, the Tribunal has not taken into consideration the entire evidence on record as it was directed to do by this court. Hence, the finding of fact recorded by the Tribunal cannot be accepted as conclusive and binding upon this court. The main grievance upon this score is that the expression "entire evidence" referred to in the direction of this court meant that in the supplementary statement of case even those items of evidence and circumstances which were taken into account in the original statement of case should have been subjected to re-appraisal along with the other circumstances. That, how ever, was not done. For instance, the loss suffered by the company in respect of the transaction and the corresponding gain to Shrimati Rama Jain as also the payment of a sum of ₹ 6,000 per month to

Shri A. K. Jain on his being appointed a director soon after his attaining majority, showing that Shri S. P. Jain was doing this in the interest of his son, was no doubt considered before, but these two facts were not considered again in the supplementary statement of the case along with the other circumstances. In my opinion, the argument is of a purely technical nature. If circumstances of a material character are not taken into account by an authority dealing with the facts, it may well

be regarded as a lacuna in the finding of fact, inasmuch as, as was held in the case of *Bat Velbai*[25], by S.K. Das J., who delivered the leading judgment of the Supreme Court, that the court or authority having to record a finding of fact must read the entire evidence or, at any rate, all evidence of a material nature. In the instant case, it cannot be said that the material facts referred to in the criticism, on the finding of fact, advanced by the learned Advocate-General, have not been considered, but that they
were considered separately in the original order of the Tribunal and in the supplementary statement of case. It may be that the Tribunal did so because, if certain facts were already considered and inference drawn from them was available, it was not necessary for the Tribunal to include the same facts with possibly the same inference in the supplementary statement of the case as well. The Tribunal may have taken the view that what was dealt with before need not be repeated and only those items of evidence which were not referred to in the original order required to be considered afresh. This can hardly be regarded as non-consideration of the entire evidence. To my mind, therefore, in view of the authorities referred to above, it is difficult for this court to set aside the finding of the Tribunal as has been contended by Mr. Lalnarayan Sinha appearing on behalf of the Commissioner of Income-tax,

17. In the result, therefore, it must be held that there is no merit in the case for the department. The reference must be answered in favor of the assessee and against the department. There will be no order as to costs.

S.N.P. Singh, J.

18. I agree.

19. Reference answered in favor of the assesse.

Cases Referred.

[1][1953] 24 I.T.R. 338
[2][1958] 34 I.T.R. 30
[3][1955] A.C. 309 : 28 I.T.R. 25 (P.C)
[4][1961] 41 I.T.R. 618 : [1961] 2 S.C.R. 978
[5][1963] 48 I.T.R. (S.C.) 9
[6][1961] 41 I.T.R. 613 (S.C)
[7][1963] 48 I.T.R. (S.C.) 9
[8][1965] 56 I.T.R. 365 (S.C)
[9][1960] 40 I.T.R. 552 (S.C)
[10][1965] 56 I.T.R. 365 (S.C)
[11][1965] 56 I.T.R. 365
[12][1959] 37 I.T.R. 11 : [1960] 1 S.C.R. 249
[13] [1963] 48 I.T.R. (S.C.) 92

[14][1962] 44 I.T.R. 746
[16][1955] 3 W.L.R. 410 : 28 I.T.R. 579 (H.L.). 15[1955] 28 I.T.R, 405
[17](1955) 3 WLR 410 (HL)
[17A][1965] 55 I.T.R. 674 (S.C)
[18][1955] 28 I.T.R. 405
[19][1957] 31 I.T.R. 28, 36 : [1956] S.C.R. 691
[20][1953] 24 I.T.R. 488 : [1954] S.C.R. 268
[21][1964] 53 I.T.R. 702
[22][1963] 49 I.T.R. (S.C.) 130
[23][1968] 68 I.T.R. 200 (S.C)
[24][1955] 57 I.T.R. 176 (S.C)
[25][1963] 49 I.T.R. (S.C.) 130