

ITA/155/2011

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA XIX, KOLKATA

-Versus-

M/S. SANDERSON & MORGANS

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 7th February, 2024

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.
Ms. Swapna Das, Adv.
Mr. Asit Kumar De, Adv.
...for the respondent.

1. Heard Sri Vipul Kundalia, learned senior standing counsel along with Sri Soumen Bhattacharjee, learned junior standing counsel for the appellant/Department and Sri J. P. Khaitan, learned senior counsel assisted by Sri Ananda Sen, Smt. Swapna Das and Sri Asit Kumar De, learned Advocates for the respondent/assessee.

2. This appeal was admitted by an order dated 24.08.2011 on the following substantial question of law:

“Whether the learned Tribunal below committed substantial error of law in overlooking the fact that the alleged “out of pocket expenses” had been exclusively kept out of the books and on reimbursement of the sum by the clients to the assessee, it was the duty of the assessee to route the same through the profit and loss account and in the absence of such course being taken, the Assessing Officer was quite justified in adding the same amount to the total income of the assessee.”

Facts :

3. Briefly stated facts of the present case are that the respondent/assessee is a very old solicitor firm. During the assessment year in question i.e., Assessment Year 2007-08, the respondent/assessee disclosed receipts from profession amounting to Rs.1,82,02,958/-. As per the TDS certificate the amount received was Rs.5,56,88,817/-. Therefore, the Assessing Officer sought explanation from the respondent/assessee for the difference of Rs.3,74,85,859/-. The assessee explained that it has been receiving advances from its clients, a portion of which was spent on behalf of the client for counsels' fees, stamp paper, court-fees stamp, payment to rent controller, bank draft in lieu of stamp duty and registration fees etc. He also gave complete details of payments made head-wise.

4. The Assessing Officer recognized that the money was spent by the assessee on behalf of his clients and yet he added the aforesaid differential amount of Rs.3,74,85,859/- in the income of the assessee.
5. Aggrieved with the assessment order dated 24.12.2009 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') passed by the Assessing Officer, the assessee preferred an appeal No.921/CIT(A)-XXXVI/Kol/Cir-54/09-10 which was allowed by the Commissioner of Income Tax (Appeals)-XXXVI, Kolkata by order dated 30.04.2010.
6. Aggrieved with the aforesaid order of the CIT(A), the appellant herein, i.e., the Income Tax Department filed an appeal before the Income Tax Appellate Tribunal being ITA No.1513/Kol/2010 (Deputy Commissioner of Income Tax, Circle-54, Kolkata vs. M/s. Sanderson & Morgans). The assessee also filed a cross-objection challenging some other addition made by the Assessing Officer and sustained by the CIT(A). The ITAT dismissed the appeal of the revenue and partly allowed the cross-objection of the assessee by the impugned order dated 14.10.2010.
7. Aggrieved with the aforesaid order of the ITAT, the appellant herein has filed the present appeal under Section 260A of the Act, 1961.

Submission(s) :

8. Learned counsel for the appellant referred to the provisions of Section 145 of the Act, 1961 and submits that the respondent assessee should

have first included the aforesaid differential amount of Rs.3,74,85,859/- in the books and thereafter should have claimed expenses. In other words, the entire receipts of the amounts from the clients should have been routed by the assessee through his books of account. Since it was not done, therefore, the entire amount was correctly added in the income of the assessee.

9. When confronted with the inter-parties judgment on similar issue passed by this Court in Income Tax Reference No.69 of 1964, decided on 24.04.1968, learned counsel for the appellant submits that the said judgment relates to unclaimed clients' amount which was credited/ written off by the assessee and as such, that judgment is of no help to the respondent assessee.
10. Sri J.P. Khaitan, learned senior advocate for the respondent assessee, submits that the findings recorded by the CIT(A) and the ITAT are findings of fact based on consideration of relevant evidences on record. He submits that the assessee being a solicitor firm was acting as an agent of its clients for the purposes of making payment of court fees, stamp and advocates' fees etc. which the assessee paid as an agent of the clients. Since the amounts received in advance for making payment on behalf of the clients as agent were not professional receipts of the assessee, therefore, there was no question to enter it in the books of account as professional receipts or receipts of the assessee or as part of

the income of the assessee. He further submits that payments made by the solicitor firm on behalf of the clients as agent have neither been disputed nor doubted by the assessing officer. Therefore, in any case, the effect stands neutralised. He further submits that since the money received by the assessee from its clients were not trade receipts but were clients' money, to be held in fiduciary capacity, there can be no justifiable reason to reflect it in the books of account as receipts. He drew our attention to the details of account head and particulars of each account head with respect to the aforesaid differential amount, which were noted by the CIT(A) in its order. He also drew our attention to own finding of the assessing officer that the assessee firm incurs expenditure on behalf of its clients and the expenses are reimbursed by the clients in pre/post expenditure basis and the resultant sum is shown as liabilities on "advance from clients" account in the balance sheet. He also drew our attention to the complete details furnished before the assessing officer, as has been noted in the assessment order, that the assessee has submitted summary position of clients' account as on 31.03.2007, the list shows net opening balance, receipts, reduction of out-of-pocket expenses and professional fees. He submits that when the bills are settled by the clients, the fees are credited in the books of account with the net figure. He relied upon an inter-parties judgment of this Court in the aforesaid ITR No.69 of 1964. He submits that the appeal is totally meritless and deserves to be dismissed.

Discussions and Finding

11. We have carefully considered the submissions of learned counsel for the parties and perused the paper book.
12. There is no dispute on facts to the extent that the clients of the assessee gave advance money of Rs.5,56,88,817/- during the assessment year in question, out of which, Rs.3,74,85,859/- was paid under different heads by the assessee as agent on behalf of the clients. Head-wise summary of payments made by the assessee on behalf of the clients as agent have been noted by the CIT(A) in its order dated 30.04.2010. The assessing officer himself has noted in the assessment order that when bills are settled, only fees are credited to the profit and loss account with the net figure only. The assessing officer admitted the fact in the assessment order that the assessee solicitor firm receives advances from clients in pre-post expenditure basis and the payments are made on behalf of the clients. The CIT(A) has extensively dealt with the issue and after scrutiny of facts, recorded its findings as under:-

*“I have carefully considered the above. The appellant is a firm of advocates and Solicitors carrying on legal profession. **As stated by the AO in the Assessment order, the appellant has been receiving advances from its clients a portion of which was spent for meting expenses like on counsel fee, stamp papers, travel etc. The balance amount of advances was shown as liability in the Balance sheet. Further the appellant recognizes income when the job assigned to them***

is completed. In other words the bills are raised when the job is completed. On raising bills a portion of the amount received as advances from the client is recognized as income. This, as per the appellant, is categorized as “in pocket fee”. Further, the expenses like Travelling expenses, purchase of stamp papers, payments to rent controller, Registration fee, counsel fee etc. incurred on behalf of their clients, met out of the advances received by the appellant is as per the appellant, treated as “out of pocket expenses”. Further these “out of picket expenses” were kept out of profit & loss account for the year.

The AO took the view that the appellant, by not bringing these receipts and expenses into profit and loss account had under stated the Business profit to that extent. This view of the AO is clearly incorrect. If these receipts are taken to the P&L A/c, then the corresponding expenses also are required to be taken to the P&L A/c which will neutralise the effect. Further, the advances which are subjected to TDS can not be treated as income because the job is to be performed and bills are raised and income is recognized.

Further it's not the AO's case that the expenses were not actually laid out or they were not laid out for the purpose of the Appellant's business. It is also not the AO's case that all amounts, including advances, received by the appellant should be treated as Income of the appellant.

Further, the AO himself recognized that the expenses incurred by the appellant were only on behalf of the appellant's clients. Then how the same can be treated as appellant's income ? The Hon'ble High Court of Kolkata in the

appellant's own case, reported in 75 ITR 438, referred to above, has taken the same view.

Considering the above, I am of the view that there is no justification for treating the amount of Rs.3,74,85,859/- as appellant's income. Accordingly, the AO is directed to delete Rs. 3,74,85,859/-."
(Emphasis supplied)

13. The ITAT has critically analysed the assessment order as well as the order of the CIT(A) and held that there is no justification for treating the amount of Rs.3,74,85,859/- as appellant's income. The ITAT has found no infirmity in the order of the CIT(A) and accordingly dismissed the appeal of the revenue and affirmed the findings of the CIT(A).
14. The concept of solicitor firm in India has in fact originated from England. While dealing with the position of solicitors in India, Marten, C.J., observed in *Tyabji Dayabhai & Co. v. Jetha Devsi & Co.*, AIR 1927 Bom 542 as under:

"In the first place it must be clearly understood that the rights and duties of attorney are in no way part of the indigenous law or practice in India. Their profession originates from England; it grew up under the English Common Law and it is clear that it was the Common Law which governed their rights and duties in the King's Courts established by the Supreme Court charter of 1823 to which Courts our present High Court is the successor."

15. This Court in *Damodar Das V. Morgan & Co.*, reported in AIR 1934 Cal 341 quoted the above observation of Bombay High Court and held as under:-

*“Mutatis mutandis those words appear to me to apply to the Calcutta High Court. I take the learned Chief Justice’s words as amounting to a statement that the rights of an attorney in India are the same as the rights of a solicitor in England, except in so far as the latter have been diminished or increased by statute.” There are good reasons why the English Common Law principles should be applied in relation to Indian solicitors, those principles are based on justice, equity and good conscience and, in the absence of statutory provisions in this country, should govern the relationship between solicitors and clients. This view was expressed by Jenkins, J., (as he then was) in *Khetter Kristo Mitter v. Kally Prosunno Ghose*, (1898) ILR 25 Cal 887, in the following language:-*

“These principles appear to me to be the clear result of the authorities in England; and founded, as they are, on justice, equity and good conscience, I see no reason why they should not apply in this country.”

16. In **Halsbury’s Law of England** (Simonds Edition), Volume 36, **the relationship of a solicitor with his clients in respect of clients money has been described as under:-**

“(Article 85): “The relationship between solicitor and client is a fiduciary one, but it does not follow that a solicitor is in all respects a trustee in relation to his client. Ordinarily the relationship between solicitor and client is that of agent and

principal and therefore time will run against the client in respect of money left in his solicitor's hands; but special circumstances, as where money is paid by the client to his solicitor for a particular purpose, may constitute the solicitor a trustee of that money in relation to the client, so that time will not run against the client to preclude his recovery of money, not applied for the particular purpose."

* * *

(Article 131): "The obligations of a solicitor towards his client may be viewed from two aspects, namely, that of equity, and that of the Common Law. In equity the relationship of solicitor and client is recognised as a fiduciary relationship and carries with it obligations on the solicitor's part to act with strict fairness and openness towards his client; for failure to fulfil this obligation a solicitor will be liable to make compensation in respect of any resulting loss to his client, though the circumstances are not such as would sustain an action for deceit at common law. By the common law a solicitor's retainer imposes on him an obligation to be skilful and careful; for failure to fulfil this obligation he may be made liable in contract for negligence, whether he is acting for reward or gratuitously, and whether he has or has not a practising certificate in force at the time.

* * *

(Article 275): "A solicitor who, as solicitor for a client, has received and has in his hands money of the client, may be ordered, on application being made by or on behalf of that client or his personal representatives, under the Court's inherent jurisdiction over its officers, to account for money received or paid and to pay over to the client, or into Court, the balance due

to the client after deducting any money owing to the solicitor by the client for costs or other reason. If misconduct was not alleged the application was formerly a proper one to make at chambers, and it is now usually made there by summons under a special rule of Court, and the order may be enforced by attachment if it comes within an exception to the Debtors Act, 1869, and the payment is defined with sufficient certainty."

17. After referring to the history of solicitors in India, the Halsbury's Law of England (Simonds Edition), Cordery's Law relating to Solicitors'(5th Edition) English Rules known as Solicitors' Accounts Rules, 1945, Section 38 of the Bankruptcy Act, 1914 and Section 88 of the Indian Trusts Act, 1882, **this Court in the above referred ITR No. 69 of 1964 decided on 24.04.1968 reported in AIR 1969 (Cal) 211 in the case of the respondent/assessee itself, held as under:-**

"4. In Cordery's 'Law Relating to Solicitors" (5th Edition) at pp. 144-145, the same view appears:

"The usual relation of solicitor and client is that of agent and principal, and this is so in respect of the client's moneys received by the solicitor in the ordinary course of business. In the absence of special circumstances, therefore, the Limitation Act, 1939, Section 2 (q), which bars the action in six years, will run from the time of the receipt by the solicitor or last acknowledgment or part payment."

* * * *

"Special circumstances are needed to raise the relation of trustee and cestuique trust between solicitor and client, as

where the solicitor receives his client's money not for remittance, nor as banker merely, but for a particular purpose, and with the duty of holding it for the benefit of the client, and keeping it until it is called for."

At p. 441 of the same book the following passage appears:-

"Every solicitor who holds or receives client's money including money proper to be paid in under Rule 4, is bound to keep and maintain separate bank account for clients' money and without delay to pay such money into his client account; and any solicitor may keep more than one client account.

Clients' money is trust money in the wider sense demanded by the general law of trusts; and thus, for example, on a solicitor's bankruptcy the chose in action represented by the client account is 'property held by the bankrupt on trust for another person' within Section 38 of the Bankruptcy Act, 1914, and does not vest in the trustee in bankruptcy."

The expression client's money has a well-known meaning, as appears from the definition of the expression in the English rules known as Solicitors' Accounts Rules, 1945. In the said rules client's money is defined as:-

"Client's money shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor or, in connection with his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity; provided that the expression 'client's money' shall not include:-

(a) money held or received on account of the trustees of a trust of which the solicitor is solicitor-trustee, or

(b) money to which the only person entitled is the solicitor himself, or in the case of a firm of solicitors, one or more of the partners in the firm."

Although we have no rules like the Solicitor's Accounts Rules in this country, we think that the expression 'client's money' should not be given a different meaning in this country.

5. In this context we need remind ourselves of the provisions of Section 88 of the Indian Trusts Act, 1882, which reads as follows:-

"Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."

Now, a solicitor in this country fulfils the description of legal adviser and the advantages, if any, gained by him in his fiduciary character must be governed by the provisions of Section 88 of the Trusts Act. Although standing in a fiduciary capacity a solicitor, as agent of his principal, namely the client, has a lien on client money and over goods bailed to him for his costs. This appears from Section 171 of the Indian Contract Act.

... ..

A solicitor in this country fulfils the description of legal adviser and the advantages, if any, gained by him in his fiduciary character must be governed by the provisions of

Section 88 of the Trusts Act. Although standing in a fiduciary capacity a solicitor, as agent of his principal, namely the client, has a lien on client money and over goods bailed to him for his costs. This appears from Section 171 of the Indian Contract Act. . . .”

“13. Mr. Pal argued that we should not be guided by Tattersall’s case, (1939) 22 Tax Cas 517 ITR 316 (C.A.) because in that case there was no money initially paid, as was done in the instant case. He submitted that what was done in that case was to put a horse belonging to a client to auction. The proceeds of the sale was money belonging to the auctioneer's client, as much as the animal itself had belonged to the client. The auctioneer might have been entitled to some remuneration out of the money received but for all practical purposes the sale proceeds did not belong to the auctioneer but to the client. On the other hand, he submitted, when money was made over to the solicitor, in the instant case, the solicitor received the money as trading receipt. That character, he submitted, was impressed upon the money throughout and the balance of that money, even though refundable to the client, when transferred to the profit and loss account would be profit out of trading receipt and consequently assessable to Income-tax. In our opinion, this argument should not be accepted. The argument proceeds on an entire misconception of the character of client's money received by a solicitor. The solicitor is the agent of the client. The client makes over the money to the solicitor for some work being done by the Solicitor as his agent. This position is not altered by the fact that the solicitor retains a lien upon the balance of the money for his costs. The result of solicitor having a lien on the

balance of the money is no more than a person having a charge on somebody else's money from this client, he does not do so as a trading receipt but he receives the money of the principal in his capacity as an agent and that also in a fiduciary capacity. The money so received does not have any profit-making quality about it when received. It remains money received by a solicitor as "client's money" for being employed in the client's cause. The solicitor remains liable to account by this money to this client.

...

...

...

*Since we are convinced that **money received by the assessee from its clients were not trading receipts but were clients' money, to be held in a fiduciary capacity**, we are of the opinion that the decision in Tattersall's case will apply to the facts of the instant case and should not be ignored as was contended by Mr. Pal."*

"16. ...

...

...

***In the instant case, we have already observed, the money received was money of the principal received by the agent in a fiduciary capacity, for being employed for the work of the principal entrusted to the agent. We have already seen that the balance of the money was refundable by the agent to the principal. Since the money was impressed with the character of somebody else's money, namely, clients' money, it did not become the income of the assessee.** It may be, in the absence of a Rule like the Solicitors' Account Rules in this country, the assessee mixed up this money with its own money and may have deposited the money in its own bank account; it may be that*

this money remained part of the general assets of the assessee for a long time; but this mixing up did not have the result of converting the money into the assessee's money or trading receipt or income. That being the position, we do not think that the Tribunal was wrong in not relying upon the Punjab case, (1953) 24 ITR 597: (AIR 1954 Punj 61) and being guided by Tattersall case, (1939) 22 Tax Cas 51: 7 ITR 316 (C.A.) in this matter."

(Emphasis supplied)

18. The principle laid down in the above referred judgment of this Court in *Sandersons & Morgans (supra)* has been referred/ followed by Allahabad High Court in *Bijli Cotton Mill (P) Ltd. vs. Commissioner of Income Tax*, (1971) 81 ITR 400 (All) and by Delhi High Court in *Commissioner of Income Tax vs. Motor General Finance Ltd.* (1974) ITR 582 (Del.)
19. In *Commissioner of Income Tax vs. Sundarm Iyengar & Sons Ltd.* (1996) 6 SCC 294 (paras 13, 17) Hon'ble Supreme Court impliedly approved the principle laid down in *Sandersons & Morgans (supra)* as under:-

"13. In the case of CIT v. Sandersons and Morgans principle of Morley v. Tattersall was applied. In that case, the question was whether interest received by a solicitor on the amounts belonging to his clients was taxable as his income. This Court held that amounts received from his clients by a solicitor were not trading receipts, but were in fiduciary capacity. Therefore, the principles laid down in Tattersall case will apply."

“17. There is no dispute that the deposits in the case before us were received from trade parties who had not made any claim for repayment of the balance. The Income Tax Officer has pointed out that the amount had arisen as a result of trading transaction and had a character of income. The Tribunal has, however, held that the amount received in course of trade was of capital nature. The Tribunal, thereafter, straightaway applied the principle of Morley v. Tattersall and held since it was of a capital nature at the time of the receipt, it could not become the assessee’s income later on.”

20. In Commissioner of Income Tax, Calcutta vs. Karam Chandra Thapar & Ors. (1996) 10 SCC 575 (paras 4, 30, 34) the Hon’ble Supreme Court again impliedly approved the principle laid down in Sandersons & Morgans case (supra), as under:-

*“4. The assessee made a further appeal to the Tribunal. The Tribunal after referring to a large number of decisions including three English cases – Morley (H.M. Inspector of Taxes) v. Tattersall, Jay’s The Jewellers Ltd. v. IRC and Elson (Inspector of Taxes) v. Prices Tailors Ltd. – concluded that the amounts received by the assessee from the colliery companies on account of under-charges were not its trading receipts. The Tribunal strongly relied on the observations of the Calcutta High Court **in the case of CIT v. Sandersons & Morgans wherein it was held that the amounts received by a firm of solicitors on behalf of its clients was not its income when it was received and will not be treated as its income** later on merely because the amount remained with the firm and was*

utilised by the firm in its business. The Tribunal strongly relied on the following observations of the Court

*"... The solicitor is the agent of the client.... We are of the opinion that **when a solicitor receives money from his client, he does not do so as a trading receipt but he receives the moneys of the principal in his capacity as an agent and that also in a fiduciary capacity. The money so received does not have any profit-making quality about it when received.... The solicitor remains liable to account by this money to his client.**"*

and observed:

"We think these observations fully apply to the facts of the present case. It was then contended for the Revenue that since the solicitor did not stand in the position of a trustee to the client and since the Limitation Act applied, the remedy of the clients to recover some of the balances may have become barred by limitation. This contention was rejected, their Lordships observing:

'We do not think that this consideration in any way alters the legal position.... Thus even though the remedy of some of the clients may have become barred by limitation, even then the barred debt did not become the income of the assessee....'

These observations apply with equal force here and make it clear that the transfer of some of the balances to the Profit and Loss Account by the assessee does not convert it into a trading receipt, even if such transfer is based on the ground of limitation. We may only add that, on this aspect of the case, it is

true that their Lordships were not asked to consider Jay's case but their decision is binding on us. We see no difference between the character of the assessee's receipts in that case and here except that the amounts involved are larger."

"30. To our mind, the case is a very simple one. The assessee, in the course of his business collected every year substantial amounts on account of under-charges. The sums so collected were the property of the assessee subject to certain contingencies. It did not cease to be a trading receipt because, in the words of Ungood-Thomas, J., they might or might not have to be debited again. The assessee's account all along showed a steady surplus in this account. The claims made by the consignees were always less than the amounts received by the assessee from the collieries. As and when the consignees made their claims, they were paid. These payments will have to be treated as trading expenses. We do not see the case as a case of transaction on capital account. On the contrary, this is a simple case where trading receipts were more than expenditure. The balance will have to be brought to tax as profits of business. As pointed out by Atkinson, J. in the case of Jay's The Jewellers a common sense view will have to be taken in such case."

*"34. **In the case of CIT v. Sandersons and Morgans** it was held that the assessee-firm of solicitors had credited a sum of Rs.4078 being the aggregate of unclaimed balances in as many as 83 personal ledger accounts of the assessee's clients, who had advanced money to the assessee in connection with the cases conducted by the assessee for a few years. **It was held by the Court that the amount was not taxable as the money belonged to the assessee's clients.** I do not see how*

*this case helps the respondents in this case. In this case, it was found that the money was entrusted to the assessee by the clients. The money was their money and after deduction of expenses, the balance amount continued to be held by the assessee on behalf of various parties. **Since the money belonged to the clients of the firm of solicitors from the very beginning, it could not be equated with the money of the solicitors in the relevant year of account.** Nothing had happened in this particular year to convert the clients' money into income of the solicitors”*

(Emphasis supplied)

21. Thus, the principle of law laid down by this Court in assessee's own case i.e., in *Sandersons & Morgans (supra)* has been followed by Allahabad High Court and Delhi High Court and has also been approved by Hon'ble Supreme Court in the above quoted two judgments. Thus, the principle of laid down in *Sandersons & Morgans case (supra)* is binding upon the appellant herein i.e., the Commissioner of Income Tax-XIX, Kolkata.
22. Thus the solicitor is the agent of the client. The client makes over the money to the solicitor for some work being done by the Solicitor as his agent. The money must be employed to that purpose and must not be treated as money received for any other purpose. This position is not altered by the fact that the solicitor retains a lien upon the balance of the money for his costs. The result of solicitor having a lien on the

balance of the money is no more than a person having a charge on somebody else's money. We are of the opinion that **when a solicitor receives money from his client, he does not do so as a trading receipt but he receives the money of the principal in his capacity as an agent and that also in a fiduciary capacity. The money so received does not have any profit-making quality about it when received. It remains money received by a solicitor as "client's money" for being employed in the client's cause. The solicitor remains liable to account by this money to his client.**

23. In view of the aforesaid, we are of the view that the monies received by the respondent/assessee from clients were held by the assessee in a fiduciary capacity. The money received by the assessee was the money of the principal which was received by him as the agent in a fiduciary capacity for being employed for the work of the principal (clients) entrusted to him. It was not trading receipt. Therefore, the respondent/assessee was not under any legal obligation to show it as his receipts of money from the clients. Even factually, since the money received from clients by the respondent/assessee was not his money, therefore, the assessee could not have entered it in his accounts as his money. That apart, the payments made by the assessee as agent on behalf of his client (principal) under various heads, have not been doubted or disputed and instead a finding of fact regarding such payments have been arrived at by the CIT(A) and the Tribunal. In any

event, the effect of receipt of money as agent stood neutralised by payment thereof on behalf of the principal (clients). Hence, effect of receipts stood neutralised in so far as the determination of income liable to tax is concerned.

24. Learned Counsel for the appellant has placed much reliance upon the provisions of Section 145 of the Act, 1961. We find on facts of the present case that no adverse inference on the basis of Section 145 can be drawn against the assessee inasmuch as it is not the case of the revenue that sub-Section (3) of Section 145 is attracted on facts of the present case. Even, learned Counsel for the appellants, despite being asked by us repeatedly, could not point out from the assessment order that any of the conditions as contained in sub-Section (3) of Section 145, factually existed.
25. For all the reasons aforestated, we do not find any merit in this appeal. Consequently, the substantial question of law as framed is answered in favour of the assessee and against the revenue. The **appeal (ITA/155/2011) is dismissed.**

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)