

Commissioner of Income-tax, Bombay City I, Bombay v. AFCO (P) Ltd., Bombay

Civil Appeal No. 21 of 1962

[1963] Supp. 1 SCR 766 | 1962-10-25

Historical company-tax rebate: the Finance Act 1955 expression 'company to which section 23A cannot be made applicable' covered a private company where, on the circumstances, a section 23A order was not justified.

Indian Income-tax Act, 1922: sections 18(3D), 18(3E), 23A(1) and 23A(9) | Finance Act, 1955: section 2 and Schedule I, Part I, Item B

3-judge bench; unanimous judgment delivered by J. C. Shah, J. | J. L. Kapur, J. | M. Hidayatullah, J. | J. C. Shah, J.

Assessment years: 1955-56

Historical statutory setting

The decision concerns the Finance Act 1955 rebate and section 23A of the repealed 1922 Act; its distribution percentages, annas-per-rupee rates and super-tax mechanism are not current-law rules.

Holding is circumstance-specific

The Court did not hold that every private company automatically qualified. It held that the statutory phrase turned on whether a section 23A order could justifiably be made in the company's actual circumstances.

Source boundary caution

The PDF includes adjacent-report material before SCR 766 on page 1 and after SCR 776 on page 11; neither adjacent portion forms part of this judgment.

No current-law clearance

Later judicial treatment and current statutory applicability have not been comprehensively checked; no current-law or citator clearance is represented.

01 FACTS OF THE CASE

For the account year ended 31 March 1955, AFCO Private Ltd. was assessed on total income of Rs.49,843. It declared Rs.11,712 as dividend on 13 July 1955 and a further Rs.5,612 before the close of assessment year 1955-56, distributing at least 60% of total income after income-tax and super-tax. AFCO claimed the one-anna-per-rupee rebate under Schedule I, Part I, Item B of the Finance Act 1955. The Income-tax Officer and Appellate Assistant Commissioner rejected it, reasoning that section 23A could in principle apply to a private company; the Tribunal reversed and the Bombay High Court answered the reference for AFCO (SCR pp.766-769; PDF pp.1-4).

Source: [Primary judgment: facts and reference question](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 23A targeted avoidance of shareholder super-tax through retention of company profits. Although a private company fell outside the public-substantial-interest exclusion in section 23A(9), an order still depended on the statutory distribution threshold and the officer's assessment of earlier losses or smallness of profit. The Finance Act phrase 'cannot be made applicable' therefore referred to whether an order could justifiably be made in the actual circumstances, not only to companies categorically excluded from section 23A. Earlier Finance Acts had granted the rebate whenever no section 23A order was made; the 1955 wording simplified administration rather than silently withdrawing the benefit from all private companies. The separate, expressly public-company language used for super-tax rebates reinforced that reading (SCR pp.769-775; PDF pp.4-10).

Source: [Primary judgment: statutory discussion](#)

03 JUDICIAL DECISION

The Supreme Court held that AFCO was entitled to the claimed rebate. It affirmed the High Court's construction and dismissed Revenue's appeal with costs (SCR pp.775-776; PDF pp.10-11).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of AFCO, the respondent assessee-company. The one-anna rebate was sustained and the Commissioner of Income-tax's appeal was dismissed with costs; the ruling did not create an automatic rebate for every private company (SCR pp.773-776; PDF pp.8-11).

Source: [Primary judgment: operative outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: when a fiscal benefit refers to a provision that 'cannot be made applicable', first determine whether the cross-referenced provision operates through a case-specific statutory determination or a categorical exclusion. Preserve the exact assessment-year Finance Act, distribution computation and officer findings; do not turn AFCO into a general private-company exemption. For present work, identify the current dividend and closely held-company regime independently because this historical rebate and section 23A mechanism have been repealed.

Source: [Primary judgment: basis for review point](#)

SOURCE & VERIFICATION

Supreme Court Reports scan - public eSCR mirror

Exact 11-page catalogue PDF read in page-preserving text and visually inspected. PDF page 1 contains the end of the preceding report before AFCO begins at SCR 766; PDF page 11 contains the AFCO disposition at SCR 776 followed by the next case's headnote. Identity, decision date, Civil Appeal No. 21 of 1962, three-judge bench, opinion author and operative dismissal were verified. No same-party, docket, citation, source-hash or standalone judgment match was found in the published collection, reviewed archives or dispositions.

Open cited source rendition

Exact source bytes, SHA-256 and 11-page count match catalogue asset S_1963_1_766_776; every source page was read and visually inspected.

The source verifies the title, single appeal, three-member bench, decision date, Finance Act 1955 rebate issue and dismissal with costs.

No exact source-hash, asset-ID, SCR-citation, docket, party-title or same-judgment match was found in the published corpus, reviewed archive or disposition register.

STATUTORY SCOPE

The ruling construes the repealed Indian Income-tax Act, 1922 and the one-anna company rebate in the Finance Act, 1955. The section 23A distribution threshold, super-tax mechanism and rebate language are historical; no current dividend, closely held-company or rebate rule is certified.

LATER TREATMENT

Source checked 2026-10-11. Later judicial treatment and current statutory applicability have not been comprehensively checked; no current-law or citator clearance is represented.

AI DISCLOSURE

This AKHB research note was prepared with AI assistance from the identified primary report and has not been represented as independently human-reviewed.

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