

N.A. Malbari and Bros. v. Commissioner of Income-tax, Bombay

Civil Appeal No. 878 of 1962

[1964] 5 SCR 560 | 1963-11-25

Was a second, higher section 28 concealment-penalty order void merely because an earlier penalty order for the same original concealment still stood when the second was made?

Indian Income-tax Act, 1922: sections 22(4), 23(3), 28(1)(c), 28(3), 34 and 35

Three-judge bench; unanimous judgment delivered by A. K. Sarkar, J. | A. K. Sarkar, J. | M. Hidayatullah, J. | J. C. Shah, J.

Assessment years: 1951-52

One surviving order, not double recovery

The Court accepted that two penalty orders for the same concealment may not stand together or be enforced simultaneously. The result rested on the earlier Rs.20,000 order having been cancelled without Revenue challenge, leaving only the Rs.68,501 order.

Source date discrepancy

The chronology repeatedly places production of the Bangkok books on 17 August 1953 (PDF pp.4-5 and 9), but PDF p.7/SCR 566 prints 17 August 1963. The note follows the coherent 1953 chronology and expressly preserves the isolated 1963 printing.

Historical statutory setting

The judgment construes section 28 of the Indian Income-tax Act, 1922. It does not establish present penalty duplication, initiation, quantum, reassessment or limitation rules.

Source boundary

PDF p.1 includes the end of an unrelated labour decision and PDF p.9 begins an unrelated industrial-dispute headnote. Neither adjacent matter is part of Malbari.

No current-law clearance

Later treatment and successor-law applicability were not comprehensively checked; no current-law or citator clearance is represented.

01 FACTS OF THE CASE

The Surat firm operated a Bangkok branch but omitted its branch profit from the return for assessment year 1951-52. After the assessee did not produce the requested accounts, the Income-tax Officer estimated Bangkok sales at Rs.7,50,000 and profit at five per cent, Rs.37,500, assessed on 31 January 1952, and issued a section 28(3) concealment notice that day. A Rs.20,000 penalty followed on 22 January 1954. Meanwhile, production of the Bangkok books on 17 August 1953 showed profit of Rs.1,25,520. In section 34 proceedings the assessee returned that correct figure; a further section 28(3) notice led to a Rs.68,501 penalty on 28 February 1957. The Tribunal cancelled the Rs.20,000 order but sustained Rs.68,501, and Revenue did not challenge the cancellation (PDF pp.3-6; SCR pp.562-565).

Source: [Primary judgment: facts and penalty history](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court treated the later notice as addressing the original concealment, because the reassessment return itself disclosed the correct profit. It rejected the argument that the second order was a jurisdictional nullity while the first stood. Although two orders for the same concealment might not stand together or be enforced simultaneously, discovery of the true profit allowed the Income-tax Officer to recall the earlier order and impose the higher penalty; failing formally to recall it before the second order did not destroy jurisdiction. Here the Tribunal's unchallenged cancellation left only one operative penalty (PDF pp.6-7; SCR pp.565-566). The possible limitation suggested in C.V. Govindarajulu Iyer was neither endorsed nor applicable: the original assessment of 31 January 1952 preceded knowledge of the true profit, and the first notice could not use facts obtained later without hearing the assessee on them (PDF pp.7-9; SCR pp.566-568).

Source: [Primary judgment: penalty reasoning](#)

03 JUDICIAL DECISION

The Court held the Rs.68,501 order legally valid. Because the earlier Rs.20,000 order had been cancelled and its cancellation was not challenged, only the later penalty remained. The assessee's appeal was dismissed with costs (PDF pp.7 and 9; SCR pp.566 and 568).

Source: [Primary judgment: validity of surviving order](#); [Primary judgment: dismissal](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue: the Rs.68,501 concealment penalty survived and the assessee's appeal was dismissed with costs. The result did not authorise simultaneous enforcement of duplicate penalties; the first Rs.20,000 order had already been cancelled and that cancellation was unchallenged (PDF pp.7 and 9; SCR pp.566 and 568).

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

05 AKHB REVIEW POINT

AKHB analysis: where one concealment generates successive penalty proceedings, build a dated matrix of the return, assessment, knowledge of the true income, each notice, the opportunity of hearing and each penalty order. Malbari distinguishes jurisdiction to issue the later order from whether two orders can coexist or be enforced. The practical protection is not a licence for double recovery: verify which order was recalled or cancelled and whether that cancellation became final. Also segregate facts learned after an earlier notice, because the Court treated them as irrelevant to that notice without a hearing. Apply these points only to the historical section 28 setting unless current provisions and later treatment are separately checked.

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

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

Full nine-page catalogue asset read in page-preserving text and visually inspected. PDF p.1 includes the preceding Workmen of Dewan Tea Estate disposition before the Malbari title and headnote. The judicial opinion spans PDF pp.3-9 / SCR pp.562-568, after which the unrelated McLeod headnote begins on PDF p.9. Identity, date, docket, bench, author, statutory setting and operative relief were verified. Exact source-hash, asset-ID, SCR-citation, docket, party and title searches found no same-judgment publication or disposition.

[Open cited source rendition](#)

Catalogue source 1964_5_560_568: SHA-256

4cdc297e1ef7b387753e90deb7fb159759b5f2bacda58807b6d1bf241357ebc5, 298682 bytes and nine pages; exact hash and page count verified.

All nine pages were read in page-preserving text and visually inspected; the bounded judicial opinion is PDF pp.3-9 / SCR pp.562-568.

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

The primary caption spells the party Malbari; the body spells partner Hatimbhai A. Malbary, and later reports may use Malbary. The primary caption controls the note title.

The isolated 17 August 1963 print on PDF p.7 conflicts with 17 August 1953 on PDF pp.4-5 and the surrounding chronology; the discrepancy is disclosed rather than silently erased.

No comprehensive later-treatment or current-law search is represented.

STATUTORY SCOPE

Historical concealment-penalty ruling under section 28 of the Indian Income-tax Act, 1922. It does not certify present penalty initiation, duplication, quantum, limitation or reassessment law under the Income-tax Act, 1961 or the Income-tax Act, 2025.

LATER TREATMENT

Source checked 2026-10-11. Later judicial treatment and current statutory applicability have not been comprehensively checked. The current AKHB corpus records that Commissioner of Income Tax, Lucknow v. Onkar Saran and Sons, [1992] 2 SCR 187, discussed Malbari in its own historical penalty analysis; that internal observation is not a comprehensive citator search or current-law clearance.

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.

PROFESSIONAL DISCLAIMER

General legal and tax research only; not legal or tax advice. Verify the original judgment, the governing historical statute and subsequent judicial treatment before reliance. The AKHB REVIEW POINT is editorial analysis, not the Court's holding, and no current-law clearance is claimed.