

Income Tax Officer, Kolar and Another v. Seghu Buchiah Setty

Civil Appeals Nos. 221 and 222 of 1963

[1964] 7 SCR 148 | 1964-03-11

Historical recovery procedure: after appellate reduction of assessments, the majority required a fresh prescribed demand before continuing default-based recovery.

Indian Income Tax Act, 1922: sections 23(4), 27, 29, 31, 33, 35, 45 and 46, including section 46(2) recovery certificate

3-judge bench | A. K. Sarkar, J. | M. Hidayatullah, J. | J. C. Shah, J. (dissenting)

Assessment years: 1953-54, 1954-55

Legislatively superseded

Do not present the majority's fresh-demand rule as current law. Later Supreme Court treatment records that retrospective 1964 validation legislation displaced this part of Seghu Buchiah Setty.

Split decision

Sarkar and Hidayatullah JJ. reached the assessee-favouring result in separate opinions. Shah J. dissented and would have preserved default and adjusted the existing recovery certificate.

Fresh demand later issued

By the Supreme Court hearing, fresh demands dated 8 May 1959 had issued. Hidayatullah J. noted the limited practical purpose but still decided the legal issue.

Original notice distinguished

The case concerned whether a valid original demand survived appellate reduction; it did not dispense with the need for an initial valid demand.

01 FACTS OF THE CASE

For assessment years 1953-54 and 1954-55, best-judgment assessments fixed income at Rs. 61,000 and Rs. 1,21,000 and tax at about Rs. 19,808 and Rs. 66,601. After nonpayment of section 29 demands, the officer issued section 46(2) certificates and property was attached. On 17 December 1955 the appellate authority substantially reduced the assessed incomes to Rs. 28,000 and Rs. 46,000 and the taxes to about Rs. 4,215 and Rs. 13,346. The officer sent a letter demanding the reduced sums but no fresh prescribed notice. The Mysore High Court quashed recovery under the old certificates (SCR pp.148-151 and 157-159; PDF pp.1-4 and 10-12).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

Sarkar J. reasoned that an appellate reduction replaces the original assessment rather than merely correcting figures. The original default and consequences therefore fall, especially because between appellate decision and recomputation the assessee cannot know the reduced amount. Fresh proceedings were required (SCR pp.151-157; PDF pp.4-10). Hidayatullah J. treated the prescribed demand as a vital procedural document creating the debt and default, starting limitation and enabling penalty and coercive recovery. Section 29's mandatory language applied when tax became due under any order; a letter was not the prescribed substitute after alteration (SCR pp.157-165; PDF pp.10-18). Shah J. dissented: absent an express lapse rule, default persisted after a reduction and the certificate could be adjusted; only complete vacation of the assessment ended the debt (SCR pp.165-173; PDF pp.18-26).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

By a 2:1 majority, the Court dismissed Revenue's appeals without costs and left the High Court's quashing of the original recovery proceedings intact. Sarkar and Hidayatullah JJ. required a fresh prescribed demand after the reduced assessments; Shah J. would have allowed the appeals (SCR pp.157, 165 and 173; PDF pp.10, 18 and 26).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee/respondent under the historical 1922 Act majority ruling. The original default-based recovery could not continue unchanged after appellate reduction, but the holding's fresh-demand rule was subsequently superseded by retrospective legislation (SCR pp.156-157, 164-165 and 173; PDF pp.9-10, 17-18 and 26).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: treat this judgment as procedural history, not a current recovery instruction. Preserve the original demand, appellate modification, communication, certificate and attachment dates, and separate an absent original demand from a later reduced demand. The majority and dissent explain the competing procedural logic, but the retrospective 1964 validation provision must be considered before relying on the result for later proceedings (based on SCR pp.148-173; PDF pp.1-26).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 26-page SCR report read and checked. The editorial headnote was distinguished from the judgment text and operative order.

[Open cited source rendition](#)

Exact source bytes, SHA-256 and 26-page count match catalogue asset 1964_7_148_173; the full extracted report and operative pages were reviewed.

The source verifies Civil Appeals Nos. 221 and 222 of 1963, the stated bench, issues, reasoning and operative result.

No published AKHB note or archived reviewed record with this source hash, case identity and operative decision was found.

STATUTORY SCOPE

This majority ruling construed the Indian Income Tax Act, 1922. Section 3 of the retrospective Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 later superseded the fresh-demand requirement after reduction. This note does not certify the present recovery regime.

LATER TREATMENT

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

AI DISCLOSURE

AI-assisted research. The AKHB Review Point is editorial analysis, not part of the Court's judgment.

PROFESSIONAL DISCLAIMER

AI-assisted legal research note for general information and professional research. It is not legal or tax advice. Verify the original judgment, applicable statutory version and subsequent judicial treatment before relying on it. The AKHB Review Point is editorial analysis, not part of the Court's judgment.