

Commissioner of Income Tax, Madras v. Express Newspapers Ltd., Madras

Civil Appeal No. 596 of 1963

[1964] 8 SCR 189 | 1964-05-07

Historical balancing charge and business succession: a winding-up machinery sale was outside the applicable proviso, and successor assessment under section 26(2) did not extend to the predecessor's capital gains.

Indian Income Tax Act, 1922: sections 6, 10(1), 10(2)(vii), 12B and 26(2)

3-judge bench | K. Subba Rao, J. | J. C. Shah, J. | S. M. Sikri, J.

Assessment years: See the source-scope notes; no year inferred.

Applicable statutory version

The report reproduces later statutory language, but its analysis expressly concerns the second proviso before amendment; do not transplant the cessation rule into a later regime.

Successor liability issue

The capital-gains holding limits assessment of the successor under section 26(2); it does not declare that the predecessor's gain was intrinsically exempt.

01 FACTS OF THE CASE

Free Press of India (Madras) Ltd. transferred newspaper-publication rights to Express Newspapers from 1 September 1946 and initially let its machinery and assets to it. Free Press entered voluntary liquidation on 31 October. On 1 November the liquidator confirmed the asset transfer, producing Rs. 6,08,666 above written-down value: Rs. 2,14,090 up to original cost and Rs. 3,94,576 above cost. Revenue assessed Express as successor; the Tribunal rejected the first component but accepted the capital-gains component, while the Madras High Court answered both references against Revenue (SCR pp.190-192; PDF pp.2-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

For the applicable pre-amendment balancing-charge proviso, the Court required business in the previous year, machinery used in it and a sale while carrying on business rather than winding it up. The winding-up sale failed that test; the Court distinguished the substantive balancing-allowance rule considered in National Syndicate (SCR pp.193-199; PDF pp.5-11). Section 26(2) and its proviso concerned business income. The Court treated capital gains as a separate statutory head and confined section 12B's fiction to deeming the year of income; it did not convert capital gains into business profits for successor assessment (SCR pp.199-204; PDF pp.11-16).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

Revenue's appeal was dismissed with costs. Both negative reference answers were upheld: the Rs. 2,14,090 was not taxable under the applicable balancing-charge proviso, and section 26(2) did not permit assessment of the predecessor's Rs. 3,94,576 capital gain in Express Newspapers' hands (SCR pp.199 and 204; PDF pp.11 and 16).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee/respondent on both disputed components. The dismissal left the High Court's answers intact; the capital-gains result concerned the statutory route for assessing the successor (SCR p.204; PDF p.16).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: separate the identity of the taxable person, the income head and the statutory version before analysing an asset-transfer assessment. Preserve the dates of business cessation, liquidation and transfer, and distinguish depreciation recapture from gains above original cost. This historical decision cannot substitute for examination of present successor-liability and asset-disposal provisions (based on SCR pp.193-204; PDF pp.5-16).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 16-page SCR report read and checked. The editorial headnote was distinguished from the judgment text and operative order.

[Open cited source rendition](#)

The source report contains 16 pages. Reporter headnotes and adjacent-case text are distinguished from the target judgment and operative order.

The primary source identifies Civil Appeal No. 596 of 1963, the stated bench, issues, reasoning and operative result.

STATUTORY SCOPE

The Court applied the historical section 10(2)(vii) proviso before its amendment to a 1946 sale and section 26(2) of the 1922 Act. It does not determine current depreciation recapture, capital gains or successor-liability provisions.

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.

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