

Hindustan Construction Co. Ltd. v. Income Tax Officer (Companies Circle), Bombay & Another

Civil Appeal No. 136 of 1964

[1965] 2 SCR 414 | 1964-12-10

Refund set-off under section 49E: no prior adjudication was essential, but a final rejection of the refund claim left no subsisting payment obligation to set off.

Indian Income-tax Act, 1922: sections 29, 33A, 48, 49A, 49E, 50 and 59(5) | Income-tax (Double Taxation Relief) (Indian States) Rules, 1939: rules 3 and 5 | Income-tax (Double Taxation Relief) (Ceylon) Rules, 1942 | Constitution of India: articles 226 and 133(1)(c)

5-judge bench | P. B. Gajendragadkar, C.J. | M. Hidayatullah, J. | J. C. Shah, J. | S. M. Sikri, J. | R. S. Bachawat, J.

Assessment years: 1942-43, 1943-44, 1944-45, 1947-48, 1949-50, 1950-51, 1951-52, 1955-56

Refund rejection was not reopened

The Court proceeded on the validity of the earlier final orders because the assessee had not challenged them; it expressed no opinion on whether the original limitation decision was correct.

No prior adjudication rule was qualified

Although section 49E did not invariably require an earlier adjudication, set-off still depended on an existing obligation to pay a refund.

01 FACTS OF THE CASE

The company sought double-taxation-relief refunds for income connected with Ceylon, Kolhapur and Kapurthala. Its Kapurthala claim for AY 1949-50 was rejected as four-year time-barred under rule 5; revision failed before the Commissioner and Central Board of Revenue, and those orders were never challenged. When later income-tax demands arose, the company invoked section 49E to set the claimed refunds against them and sought mandamus and prohibition under article 226, while expressly leaving the prior refund-rejection orders untouched.

Source: [Refund claim, limitation orders and assessment years: SCR pp.415-416 / PDF pp.2-3](#); [Set-off request and limited writ prayers: SCR pp.417-418 / PDF pp.4-5](#)

02 DISCUSSION BY THE HON'BLE COURT

Rules made under section 59(5) operated as if enacted in the Act, so a refund under the Indian States Rules could be a refund under the Act for section 49E. The words 'is found' did not themselves require a prior adjudication; the Income-tax Officer could determine whether a refund was due when deciding a section 49E request. But set-off had to be 'in lieu of payment', which required an outstanding, subsisting obligation to pay the refund. A claim barred by final orders left no such obligation. Since the company had not attacked the Commissioner and Board orders, the Court assumed their validity and did not examine whether rule 5 had originally been applied correctly.

Source: [Scope of review and text of section 49E: SCR p.418 / PDF p.5](#); [No prior adjudication requirement, but subsisting obligation required: SCR p.419 / PDF p.6](#)

03 JUDICIAL DECISION

The Court agreed that section 49E could not assist the company because the unchallenged final orders meant no refund payment obligation remained. It affirmed dismissal of the writ petition and dismissed the appeal without an order as to costs.

Source: [Operative dismissal without costs: SCR p.420 / PDF p.7](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue. The taxpayer could not use set-off proceedings to obtain the economic benefit of refund claims already defeated by final, unchallenged orders; the appeal was dismissed, with no costs order.

Source: [Revenue-favouring final disposition: SCR p.420 / PDF p.7](#)

05 AKHB REVIEW POINT

AKHB analysis: separate the existence of a refund entitlement from the mechanics of adjusting an admitted refund. Before seeking set-off, trace every order affecting the refund, whether it became final, and whether any payment obligation still exists. A power to determine refund entitlement within an adjustment request does not revive a claim extinguished by an unchallenged final order; current matters nevertheless require analysis under the present statute and portal procedure.

Source: [AKHB analysis based on the subsisting-obligation requirement](#)

SOURCE & VERIFICATION

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

Full 7-page SCR report read and visually checked. The editorial headnote on PDF p.1 was distinguished from Sikri J.'s unnumbered judgment beginning on PDF p.2 and continuing through the dismissal on PDF p.7; scan speckling did not obscure the judicial text.

[Open cited source rendition](#)

Exact source bytes, SHA-256 and 7-page count match catalogue asset 1965_2_414_420; every page was read as extracted text and inspected as a rendered image.

The judicial text verifies Civil Appeal No.136 of 1964, the five-member bench, the several refund and demand years, the limited section 49E issue and dismissal without costs.

No published AKHB record or archived reviewed release matched this party identity, citation, case number or source asset.

STATUTORY SCOPE

This decision construes section 49E of the repealed Indian Income-tax Act, 1922 and historical double-taxation-relief rules for Ceylon and former Indian States. It does not establish the operation of current refund-adjustment provisions under the Income-tax Act, 1961.

LATER TREATMENT

Source checked 2026-10-10. Later treatment of the subsisting-refund-obligation principle and its relationship to current refund adjustment, limitation and finality provisions has 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.