

Commissioner of Income-tax, West Bengal, Calcutta v. Gungadhar Banerjee & Co. (P) Ltd.

Civil Appeal No. 807 of 1963

[1965] 3 SCR 439 | 1965-03-22

Deemed dividend under section 23A: dividend reasonableness had to be judged from a prudent business perspective using commercial profits and all relevant circumstances.

Indian Income-tax Act, 1922: sections 23A (before the Finance Act, 1955 amendment) and 66(1)

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

Assessment years: 1948-49

Historical penal deemed-distribution provision

The burden and business-reasonableness analysis concern the pre-1955 form of section 23A of the repealed 1922 Act.

Commercial profit is not assessed income

The Court distinguished actual accounting profit from assessable profit containing disallowances or notional items; the balance sheet was prima facie, not irrebuttable, evidence.

01 FACTS OF THE CASE

For the accounting year ending 13 April 1948, the private company reported net profit of about Rs.1.28 lakh and declared Rs.44,000 as dividend. The Income-tax Officer instead worked from assessed income, computed Rs.1,51,902 as distributable and deemed a further Rs.1,07,902 distributed under section 23A because the declared amount was below 60 per cent. Appellate authorities sustained action in principle, but the Calcutta High Court held that the actual tax burden and small commercial profit made a larger dividend unreasonable.

Source: [Dividend, profit figures and section 23A order: SCR pp.440-441 / PDF pp.2-3](#); [High Court result and competing submissions: SCR p.442 / PDF p.4](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 23A required an overall business judgment, not the tax collector's perspective. The officer had to stand in the directors' place and consider prior losses, current profits, available surplus, future business requirements and other relevant circumstances; the words 'having regard to' did not confine the inquiry to two factors. 'Smallness of profit' referred to actual commercial or accounting profit, not assessable income enlarged by disallowances or notional items. Where tax had already been assessed, actual rather than estimated tax was relevant. A balance sheet was prima facie evidence but not legally final. Because section 23A imposed a penal deemed distribution, Revenue bore the burden of strict compliance. On this record, net commercial profit after actual tax was barely Rs.4,000, and Revenue had not shown that the books understated it.

Source: [Prudent-businessman standard and relevant circumstances: SCR p.444 / PDF p.6](#); [Commercial versus assessable profit: SCR p.445 / PDF p.7](#); [Actual tax, balance sheet and Revenue's burden: SCR p.446 / PDF p.8](#)

03 JUDICIAL DECISION

The Court held that the established facts made the Income-tax Officer's deemed-distribution order unreasonable. With only about Rs.4,000 of net commercial profit after actual tax on the accepted figures, it could not be said that deeming an additional Rs.64,000 distributed was reasonable. The High Court's order was affirmed and Revenue's appeal was dismissed with costs.

Source: [Commercial-profit finding and appeal dismissal: SCR p.447 / PDF p.9](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee. The section 23A deemed-dividend action failed because Revenue did not establish that a larger dividend was commercially reasonable, and the appeal was dismissed with costs.

Source: [Assessee-favouring final disposition: SCR p.447 / PDF p.9](#)

05 AKHB REVIEW POINT

AKHB analysis: when a tax consequence depends on whether a distribution was commercially reasonable, preserve the bridge from assessed income to real distributable profit. Reconcile actual tax, cash availability, past results, reserves, capital needs and credible corrections to the balance sheet. Do not cite this historical section 23A ruling as a current deemed-dividend rule without identifying the current provision and checking later authority.

Source: [AKHB analysis based on the prudent-businessman standard](#)

SOURCE & VERIFICATION

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

Full 9-page SCR report read and visually checked. The editorial headnote on PDF pp.1-2 was distinguished from Subba Rao J.'s unnumbered judgment beginning on PDF p.2 and continuing through the dismissal on PDF p.9.

Open cited source rendition

Exact source bytes, SHA-256 and 9-page count match catalogue asset 1965_3_439_447; every page was read as extracted text and inspected as a rendered image.

The judicial text verifies Civil Appeal No.807 of 1963, the three-member bench, AY 1948-49, the commercial-profit test, Revenue's burden and the dismissal with costs.

No published AKHB record or archived reviewed release matched this party identity, citation, case number or source asset; an incidental citation to this case in another published note is not a duplicate.

STATUTORY SCOPE

The decision construes section 23A of the repealed Indian Income-tax Act, 1922 before its amendment by the Finance Act, 1955. It does not establish a present deemed-dividend rule under the Income-tax Act, 1961 or any current dividend-distribution regime.

LATER TREATMENT

Source checked 2026-10-10. Later treatment of the commercial-profit distinction and any analogue under current deemed-dividend provisions has not been comprehensively checked; no current-law or citator clearance is represented.

AI DISCLOSURE

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