

Dwarkanath, Hindu Undivided Family v. Income-tax Officer, Special Circle, Kanpur and Another

Civil Appeal No. 62 of 1964

[1965] 3 SCR 536 | 1965-03-29

Commissioner's quasi-judicial revision jurisdiction and the Income-tax Officer's duty to pass an order and issue a demand notice after recomputing capital gains

Indian Income-tax Act, 1922: sections 12B, 23(3), 29, 30, 33A(2), 35 | Constitution of India: article 226

Three-judge bench; judgment delivered by K. Subba Rao, J. | K. Subba Rao, J. | J. C. Shah, J. | S. M. Sikri, J.

Historical ruling; verify current law

The Court did not decide the correct capital-gains amount or approve the cited Bombay view. The ruling applies repealed provisions and a specific non-appealable computation posture.

01 FACTS OF THE CASE

An HUF partner sold 11,230 shares as part of a transaction also involving surrender of managing-agency rights. After the Tribunal redirected assessment from business income to capital gains, the officer recomputed the amount but passed no section 23(3) order and issued no section 29 demand. An appeal was rejected as incompetent; the Commissioner rejected section 33A(2) revision and the High Court dismissed the writ in limine.

Source: [Primary judgment: facts and procedural setting](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 33A(2) barred revision where an appeal lay in the specified circumstances; here the absence of an appealable order meant revision remained open. That jurisdiction was quasi-judicial and required judicial consideration. The officer's fresh calculation created a statutory duty to pass an order and issue the prescribed demand. The supporting affidavit was adequate, and even a curable defect should not have caused summary dismissal. A parallel Bombay ruling on the same transaction made the merits issue arguable, not decided.

Source: [Primary judgment: reasoning](#)

03 JUDICIAL DECISION

The Commissioner had revisional jurisdiction and the officer had failed to discharge the section 29 duty after the fresh computation.

Source: [Primary judgment: holdings](#)

04 OUTCOME / IN WHOSE FAVOUR

High Court order set aside; certiorari quashed the Commissioner's order and mandamus directed the officer to pass an order and issue a lawful demand notice. Assessee awarded costs throughout.

Source: [Primary judgment: operative disposition](#)

05 AKHB REVIEW POINT

AKHB analysis: confirm whether an appeal actually lies before treating revision as barred, and insist on the formal order and demand that activate appellate remedies. This procedural victory did not settle the share-versus-agency allocation or final capital-gains quantum.

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

SOURCE & VERIFICATION

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

Complete 14-page SCR report read in page-preserving text and every page image inspected, from the reported opening page through the operative disposition.

[Open cited source rendition](#)

Exact catalogue SHA-256 and 14-page count verified; every page was read and visually inspected.

STATUTORY SCOPE

Historical statutory provisions are described as they appeared in the report. Verify the current enactment, amendments and later judicial treatment before reliance.

LATER TREATMENT

Source checked 2026-10-12. No comprehensive later-treatment or present-law clearance is represented. The note reports the historical statutory text and result in this primary report only.

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.

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