

Union of India and Another v. India Fisheries (P) Ltd.

Civil Appeal No. 211 of 1964

[1965] 3 SCR 679 | 1965-04-09

Historical liquidation and tax recovery: the general refund set-off power could not give Revenue priority over other unsecured creditors after its tax claim was proved in winding up.

Indian Income-tax Act, 1922: sections 48 and 49E | Indian Companies Act, 1913: sections 179, 180, 228 and 229 | Constitution of India: Articles 133(1)(c) and 226

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

Assessment years: 1948-49, 1955-56

Proved unsecured liquidation claim

Revenue had lodged and proved its 1948-49 tax demand as an ordinary claim and accepted a pari passu dividend. The holding addresses an attempted priority outside that liquidation process.

Historical statutory interaction

The reconciliation of section 49E with the 1913 Companies Act cannot be transplanted mechanically to current insolvency or tax statutes.

No general bar on assessment

The case concerns set-off and recovery from a refund, not whether tax assessment may begin or continue against a company in liquidation.

01 FACTS OF THE CASE

India Fisheries was ordered wound up on 11 October 1950. Revenue assessed Rs.8,737-15-0 for AY 1948-49, proved that demand as an ordinary liquidation claim and received Rs.5,188-3-0 in a 9.5-anna dividend, leaving Rs.3,549-12-0. For AY 1955-56 the liquidator paid Rs.2,565-6-0 advance tax, while regular assessment fixed only Rs.1,126-12-0. A Rs.1,460-1-0 refund including interest therefore arose. Instead of paying it to the liquidator, the officer invoked section 49E to set it against the earlier balance. The Commissioner affirmed; the Bombay High Court set the adjustment aside and directed treatment of the refund under section 48. The Union appealed.

Source: [Liquidation claim, refund and writ facts: SCR pp.680-681 / PDF pp.2-3](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 49E generally empowered the income-tax authorities to set a refund against tax, interest or penalty remaining payable. But sections 228 and 229 of the 1913 Companies Act required claims against an insolvent company to be proved and unsecured creditors to share *pari passu*. Revenue conceded that its claim had no priority. Once it proved the debt in liquidation, it could not use section 49E to obtain a priority that would defeat the liquidation scheme. The apparent conflict was reconciled by treating section 49E as the general provision and the liquidation debt-and-payment rules as the special provisions: section 49E applied where insolvency rules did not. On that construction, the officer lacked authority to make this set-off, and the High Court properly exercised Article 226 jurisdiction.

Source: [Statutory reconciliation and *pari passu* reasoning: SCR pp.681-683 / PDF pp.3-5](#)

03 JUDICIAL DECISION

The Supreme Court agreed with the High Court that the Income-tax Officer erred in applying section 49E and that the Commissioner erred in affirming him. It dismissed the Union's appeal with costs.

Source: [Holding and dismissal: SCR p.683 / PDF p.5](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the company in liquidation and the *pari passu* position of unsecured creditors. Revenue remained entitled to its proved ordinary claim but could not improve that position by diverting the separate refund through section 49E.

Source: [Priority limit and outcome: SCR pp.682-683 / PDF pp.4-5](#)

05 AKHB REVIEW POINT

AKHB analysis: before adjusting a tax refund against an insolvent company's old demand, identify whether the claim has been admitted in the collective process, its statutory priority and whether set-off would circumvent equal distribution. Keep tax quantification distinct from recovery against assets controlled by the insolvency forum, and apply the current tax, company and insolvency provisions rather than assuming the 1922/1913 result remains unchanged.

Source: [AKHB analysis based on the liquidation-priority reasoning](#)

SOURCE & VERIFICATION

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

Full 5-page SCR report read; the editorial headnote on PDF pages 1-2 was distinguished from Sikri J.'s judicial opinion beginning on PDF page 2 and continuing through page 5.

[Open cited source rendition](#)

Exact 183,233-byte source, SHA-256 and 5-page count match catalogue asset 1965_3_679_683.

The report verifies Civil Appeal No. 211 of 1964, decision date 9 April 1965, the three-judge bench and opinion by S. M. Sikri J.

The source distinguishes the 1948-49 ordinary tax claim from the 1955-56 excess advance-tax refund.

STATUTORY SCOPE

The decision construes section 49E of the Income-tax Act, 1922 with sections 228-229 of the Companies Act, 1913. Current refund adjustment, insolvency waterfall and corporate-liquidation treatment require independent analysis under the presently applicable tax and insolvency statutes.

LATER TREATMENT

Source checked 2026-10-10. Comprehensive later treatment, present insolvency legislation and current refund-adjustment rules have not been verified; 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.