

M. Ct. M. Chidambaram Chettiar v. Commissioner of Income-tax, Madras

Civil Appeals Nos. 477 to 488 of 1964

[1966] 2 SCR 761 | 1965-11-29

Section 44D anti-avoidance attribution where partnership assets passed to a non-resident corporation but the resident partners retained power to enjoy its income.

Indian Income-tax Act, 1922: section 44D(1), 44D(3) and 44D(5)(e) | Indian Income-tax (Amendment) Act, 1939: Act VII of 1939 (insertion of Chapter VB)

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

Assessment years: 1939-40, 1940-41, 1941-42

Repealed anti-avoidance provision

The attribution ruling depends on section 44D of the 1922 Act, the closely held family corporation and the Tribunal's unchallenged avoidance finding. It is not a statement of current foreign-income or anti-avoidance law.

01 FACTS OF THE CASE

Members of the M. Ct. M. family carried on money-lending through a registered firm. The firm began a Kuala Lumpur business and later transferred that business's assets to M. Ct. M. Banking Corporation, incorporated in Pudukkottai, receiving shares for the partners. The two sons and their mother held 1,944 of the corporation's 2,271 shares at 31 December 1938, while close relatives held the balance. For AYs 1939-40 to 1941-42, the Income-tax Officer separately assessed the partners under section 44D on the corporation's income. The Tribunal allowed their appeals because the transferred assets' income was not taxable at the time of transfer; the Madras High Court, after a further finding that section 44D(3) was not satisfied, answered the reference against the assesseees.

Source: [Family firm, corporation, transfers, assessments and reference: SCR pp.762-764 / PDF pp.2-4](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 44D focused on the consequence of a transfer, not on the identity of the transferor: 'by means of a transfer of assets' covered a transfer by the firm if it enabled the assessee to enjoy a non-resident's income. Chargeability was tested for the income in the year sought to be assessed, not at the earlier date of transfer; the contrary reading would frustrate the provision's anti-evasion object. Under section 44D(5)(e), indirect control over application of income constituted power to enjoy it. The close family relationship, near-total family shareholding, history of the business and transfer, and a recorded concession supported control. Finally, section 44D(3) placed on the assessee the burden to show a bona fide commercial transaction rather than tax avoidance. The Tribunal's finding that the transfer was to avoid tax was a finding of fact that could not be reopened in these appeals.

Source: [Transferor identity and assessment-year chargeability: SCR pp.765-767 / PDF pp.5-7](#); [Control, power to enjoy and section 44D\(3\) finding: SCR pp.768-769 / PDF pp.8-9](#)

03 JUDICIAL DECISION

The Court held that the Madras High Court had correctly answered the reference: section 44D applied to the corporation's income in the partners' hands. It dismissed all appeals with costs, with one hearing fee.

Source: [Final section 44D conclusion and dismissal: SCR p.769 / PDF p.9](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue. The non-resident corporation's income remained assessable to the three resident partners under section 44D for the years in dispute, and their bona fide-commercial-purpose defence could not displace the Tribunal's avoidance finding.

Source: [Control, avoidance finding and Revenue outcome: SCR pp.768-769 / PDF pp.8-9](#)

05 AKHB REVIEW POINT

AKHB analysis: for a historical transfer-to-non-resident issue, map the transfer, beneficial access to income, ownership and control, associated operations, assessment-year chargeability and the evidentiary burden for any bona fide-commercial-purpose exception. Do not assume the transferor and assessed person must be identical where the statutory text is consequence-based. For present matters, independently test the current statute, residence rules, attribution provisions and anti-avoidance regime.

Source: [AKHB analysis source: statutory elements, control and burden at SCR pp.765-769 / PDF pp.5-9](#)

SOURCE & VERIFICATION

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

Full nine-page SCR source file read. The editorial headnote on PDF pp.1-2 was distinguished from the unnumbered judicial text beginning on PDF p.2; the entire reasoning and dismissal order through PDF p.9 were reviewed.

Open cited source rendition

Exact source bytes, SHA-256 and nine-page count match catalogue asset 1966_2_761_769; all nine pages were read and visually checked.

The report verifies Civil Appeals Nos. 477 to 488 of 1964, decision on 29 November 1965, the three-member bench and Ays 1939-40 to 1941-42.

No matching published title, citation, case number, date or source hash was found in content/supreme-court-cases.json or prior reviewed releases.

STATUTORY SCOPE

The holding interprets the overseas-transfer anti-avoidance provision in section 44D of the repealed Indian Income-tax Act, 1922. It does not establish the operation of any present transfer-of-assets, foreign-income, controlled-entity or general anti-avoidance rule.

LATER TREATMENT

Source checked 2026-10-10. Later judicial treatment and present statutory applicability have not been comprehensively checked; no current citator or cross-border-tax 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.