

Fatehchand Murlidhar and Another v. Commissioner of Income-tax, Calcutta

Civil Appeal Nos. 1108 to 1110 of 1964

[1966] Supp. SCR 453 | 1966-07-19

1922 Act firm assessment: a genuine sub-partnership sharing profits and losses created a superior title and diverted the main-firm share income before it became the individual partner's income.

Indian Income-tax Act, 1922: sections 23(5)(a) and 66(1) | Indian Partnership Act, 1932: section 29 (discussed)

2-judge bench | K. N. Wanchoo, J. | S. M. Sikri, J.

Assessment years: 1952-53, 1953-54, 1955-56

Genuine sub-partnership required

The holding rested on an actual sub-partnership sharing both the profits and losses of the partner's main-firm interest. A mere assignment or application of profits may not produce the same result.

Repealed firm-assessment regime

Section 23(5)(a) of the 1922 Act governed the assessment mechanics. Verify current 1961 Act provisions and later authorities independently.

01 FACTS OF THE CASE

Murlidhar Himatsingka held a share in the registered firm Basantlal Ghanshyamdas. On 21 December 1949 he formed Fatehchand Murlidhar with his two sons and grandson. Clause 5 assigned to that firm the profits and losses of his Basantlal Ghanshyamdas share, although the underlying capital and its assets remained his; clause 10 allocated the sub-partnership's profits and losses among the four partners. For AYs 1952-53 and 1953-54 the issue arose in Fatehchand Murlidhar's assessment; for AY 1955-56 the income was included in Murlidhar's personal assessment. The authorities and Calcutta High Court treated the arrangement as application after accrual rather than diversion at source.

Source: [References, deed clauses and assessment history: Supp. SCR pp.454-456](#)

02 DISCUSSION BY THE HON'BLE COURT

Sharing both profits and losses made the 1949 deed a true sub-partnership, so the right to receive profits and bear losses became an asset of Fatehchand Murlidhar. Applying Sitaldas Tirathdas, the Court treated the arrangement as one in which income was diverted before reaching Murlidhar, not merely applied after receipt. A sub-partner does not become a partner in the main firm or gain a direct claim against its other partners, but has enforceable rights inter se; the main partner receives for himself and the sub-partners. Charandas Haridas supported giving tax effect to the changed representative character. The Court approved Ratilal B. Daftari, overruled Mahaliram Santhalia and distinguished the profit-only assignment in K. A. Ramachar. Section 23(5)(a) apportioned a registered firm's income but did not prevent the officer from identifying the real recipient and applying the provision again to the sub-partnership.

Source: [Sub-partnership and diversion analysis: Supp. SCR pp.457-462](#); [Section 23\(5\)\(a\) and final result: Supp. SCR p.463](#)

03 JUDICIAL DECISION

The sub-partnership created a superior title to Murlidhar's share income, making it the real income of Fatehchand Murlidhar rather than his personal income. Nothing in section 23(5)(a) prevented that treatment and a further application of the provision. The Court allowed the appeals, set aside the High Court judgment, answered both reference questions negatively and awarded the appellants costs in the Supreme Court and High Court with one hearing fee.

Source: [Real-income conclusion and operative relief: Supp. SCR pp.462-463](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee/appellants. The income was assessable as the real income of the sub-partnership, not as Murlidhar Himatsingka's personal income. The appeals were finally allowed, the High Court judgment set aside and costs awarded in both courts with one hearing fee.

Source: [Final answers and costs: Supp. SCR p.463](#)

05 AKHB REVIEW POINT

AKHB analysis: distinguish a genuine sub-partnership from a direction to distribute income after accrual. Evidence should address mutual agency, sharing of losses as well as profits, enforceable rights among sub-partners, books and actual conduct. Also separate ownership of the partner's underlying capital from rights in the resulting share income. The Court's section 23(5)(a) mechanics belong to the 1922 Act; present firm taxation, registration and diversion doctrine require an independent 1961 Act and later-case review.

Source: [Profit-and-loss sharing, superior title and real income: Supp. SCR pp.457-463](#)

SOURCE & VERIFICATION

Supreme Court Reports scan - public eSCR mirror

Full eleven-page supplementary SCR report read. The editorial headnote on PDF page 1 was distinguished from the unnumbered judicial opinion beginning on PDF page 2 (SCR p.454).

Open cited source rendition

Exact source bytes, SHA-256 and eleven-page count match catalogue asset S_1966_1_453_463. All pages were read and visually inspected.

The title, 19 July 1966 date, two-judge bench, Civil Appeal Nos.1108 to 1110 of 1964 and [1966] Supp. SCR 453 citation were verified from the report.

The judicial text has no numbered paragraphs; SCR and physical PDF page pinpoints are used.

The source catalogue's retrospective identifier 1966INSC125 is not printed in the report and is not used as the verified citation.

No published AKHB record matches this judgment by title, citation, asset ID, source URL or SHA-256; later notes discussing Murlidhar Himatsingka are references to the precedent, not duplicate coverage.

STATUTORY SCOPE

The decision applies registered-firm assessment under section 23(5)(a) of the repealed Indian Income-tax Act, 1922. It does not certify the present taxation or registration treatment of firms and sub-partnerships under the Income-tax Act, 1961.

LATER TREATMENT

Source checked 2026-10-10. Comprehensive later treatment, statutory succession, present firm-assessment provisions and modern diversion-of-income doctrine have not been checked. No current-law or citator clearance is represented.

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