

Esthuri Aswathiah v. Commissioner of Income-tax, Mysore

Civil Appeal No. 631 of 1966

[1967] 3 SCR 681 | 1967-04-18

Cash-credit fact-finding under the 1922 Act: the Tribunal could not adopt a concession-based estimate without reasons, and after the High Court found its order speculative it had to rehear the parties and decide the evidence on the merits.

Indian Income-tax Act, 1922: sections 2(11), 34, 66(2) and 66(5) | Mysore Income-tax Act, 1923

3-judge bench; unanimous judgment delivered by J. C. Shah, J. | J. C. Shah, J. | S. M. Sikri, J. | V. Ramaswami, J.

Assessment years: 1950-51

Formal dismissal did not end the merits

Although the Supreme Court dismissed the appeal and affirmed that the Tribunal's Rs.50,000 estimate lacked evidentiary reasons, it required a fresh Tribunal hearing on the existing merits. The Appellate Assistant Commissioner's Rs.1,37,000 addition was not thereby automatically confirmed.

Counsel's offer was not evidence

The Tribunal could not use counsel's statement that the assessee was prepared to be assessed on Rs.50,000 as a substitute for judicial evaluation of the bank, partition, business-profit and other material.

Probability remained permissible, arbitrariness did not

The Court did not demand conclusive proof. It accepted that probabilities and presumptions may fill evidentiary gaps, while prohibiting conjecture, surmise and speculation without reasons.

Printed date inconsistency within the report

The headnote at SCR p.681/PDF p.1 says the opening balance was brought into the books on 1 July 1949, while the opening paragraph of the judicial opinion on the same physical page prints 1 July 1939. The surrounding assessment chronology supports the headnote's 1949 date, but this note preserves the discrepancy rather than silently correcting the opinion.

No finding on the ultimate cash-credit amount

The Supreme Court did not decide how much, if any, of the opening balance was income from undisclosed sources. That determination remained for the Tribunal after a fair hearing.

01 FACTS OF THE CASE

Esthuri Aswathiah, a Mysore trader in groundnuts and other commodities, entered an opening cash balance of Rs.1,87,000 in his books. The Income-tax Officer accepted Rs.50,000 as prior cash and treated Rs.1,37,000 as income from undisclosed sources for assessment year 1950-51 after the earlier assessment-year treatment was set aside. The assessee relied on partition receipts, bank balances and withdrawals, jaggery-trade profits and agricultural income. The Tribunal reduced the addition to Rs.50,000, partly recording that counsel said the assessee was prepared to be assessed on that amount. On reference, the Mysore High Court held that the Tribunal's conclusion rested on no evidence (SCR pp.681-684; PDF pp.1-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court characterised the Tribunal's appellate function as judicial. It had to decide all factual and legal issues by evaluating the material, could use probabilities and presumptions where direct proof was unavailable, but could not decide by conjecture, surmise or speculation. Its unexplained Rs.50,000 estimate, substantially resting on counsel's offer and unsupported by reasons, was unsustainable; the Court also accepted that the assessee's evidence had not been properly considered (SCR pp.684-685; PDF pp.4-5). Under section 66(5), a High Court reference did not finally dispose of the pending appeal. Where the High Court found the Tribunal order vitiated by no evidence, speculation or unfair procedure, the Tribunal had to hear the parties and determine the merits conformably with that judgment. The High Court's answer therefore did not revive the first appellate addition automatically (SCR pp.685-686; PDF pp.5-6).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

Subject to an express direction that the Tribunal hear the assessee and Commissioner and dispose of the case on the evidence and according to law, the Supreme Court dismissed the assessee's appeal and ordered the appellant to pay the Commissioner's costs (SCR p.686; PDF p.6).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

Formally in favour of Revenue on the appeal and costs, but with material procedural relief to the assessee: the Tribunal had to rehear the merits, and neither its arbitrary Rs.50,000 estimate nor an automatic Rs.1,37,000 restoration could stand as the final result (SCR pp.685-686; PDF pp.5-6).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: a cash-credit determination should map every claimed source to contemporaneous evidence and explain why each item is accepted, rejected or probabilistically weighed. A concession or round-number estimate cannot replace reasons. When reading a tax reference disposition, also distinguish the High Court's advisory answer from the Tribunal's still-required conforming order and do not label a formal dismissal as a final merits victory where rehearing remains (based on SCR pp.684-686; PDF pp.4-6).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 6-page SCR report read and checked. The editorial headnote and adjacent-report boundary text were distinguished from the judicial opinion and operative order.

[Open cited source rendition](#)

Exact source bytes, SHA-256 and 6-page count match catalogue asset 1967_3_681_686; every page was reviewed.

The source verifies Civil Appeal No. 631 of 1966, the stated bench, issues, reasoning and operative result.

No published or archived standalone AKHB note with this source hash, case identity and operative decision was found.

STATUTORY SCOPE

The judgment concerns cash-credit assessment, reassessment and reference procedure under the repealed Indian Income-tax Act, 1922 against a Mysore State-tax background. It does not determine modern unexplained-credit provisions, reopening procedure or appellate practice under the Income-tax Act, 1961. No current-law or later-treatment clearance was undertaken.

LATER TREATMENT

Source checked 2026-10-11. Later judicial treatment and current statutory applicability have not been comprehensively checked; no current-law or citator clearance is represented.

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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General legal and tax research only; not legal or tax advice. Verify the original judgment, the governing historical statute and subsequent judicial treatment before reliance. The AKHB REVIEW POINT is editorial analysis, not the Court's holding, and no current-law clearance is claimed.