

Income-tax Officer, Tuticorin v. T. S. Devinath Nadar & Others

Civil Appeals Nos. 2154 to 2158 of 1966

[1968] 2 SCR 33 | 1967-10-25

Historical rectification under section 35(5) of the 1922 Act: whether a partner's assessment completed before 1 April 1952 could be corrected after the firm's post-commencement reassessment disclosed a larger share of partnership income.

Indian Income-tax Act, 1922: sections 23(5)(a), 34(1)(a), 35(1) and 35(5) | Indian Income-tax (Amendment) Act, 1953 (Act 25 of 1953): section 1(2) and section 19 | Constitution of India: Article 226

5-judge bench; majority judgment delivered by G. K. Mitter, J.; K. S. Hegde, J. dissented | K. N. Wanchoo, C.J. | R. S. Bachawat, J. | V. Ramaswami, J. | G. K. Mitter, J. | K. S. Hegde, J.

Assessment years: 1943-44

Historical retrospectivity question

The majority's holding turns on the text and commencement of former section 35(5). It should not be transferred to a different rectification or reassessment provision without a fresh textual and transitional analysis.

Prior precedent overruled narrowly

The majority declined to follow and overruled *Second Additional Income-tax Officer v. Atmala Nagaraj* on this point. It did not overrule *Habibullah*; it distinguished that case because the triggering firm assessment there pre-dated 1 April 1952.

Dissent is not the holding

Hegde J. would have preserved the finality of pre-1 April 1952 partner assessments and followed *Atmala Nagaraj*. His strict-construction and precedent-stability reasoning did not command the Court.

Caption and running-header variation

The report caption identifies the appellant as the Income-tax Officer, Tuticorin, while running headers abbreviate the matter as *C.I.T. v. Devinath*. The note follows the full signed report caption and does not treat the header as a different case.

01 FACTS OF THE CASE

T. S. Devinath Nadar and his four brothers were partners in a registered gunny business. For assessment year 1943-44, the firm was assessed on 22 January 1946 and each partner's share was fixed at Rs. 8,265; the respondent's individual assessment followed on 24 January. A section 34 notice issued on 11 September 1952 led to the firm's reassessment on 30 May 1959, including an additional Rs. 90,000. The Income-tax Officer then issued section 35(5) notices on 24 July and made consequential partner rectifications on 31 August 1959. The Madras High Court quashed those orders by following *Atmala Nagaraj* (SCR pp.35-36; PDF pp.3-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 35(5) treated a discrepancy discovered on a firm's assessment or reassessment as an apparent mistake in the partner's completed assessment and computed the four-year limit from the final firm order. The majority held that the post-1 April 1952 finding in the firm proceeding triggered the power; the partner's completed assessment could have occurred earlier. The provision aimed to align a partner's assessed share with the firm's final computation and applied when that mischief was discovered within the specified period (SCR pp.36-43; PDF pp.4-11). *Habibullah* was distinguished because both the triggering firm assessment and partner assessment there preceded commencement. *Atmala Nagaraj*, which had protected a pre-commencement partner assessment despite a later firm assessment, was rejected (SCR pp.40-43; PDF pp.8-11). *Hegde J.* dissented, reasoning that section 35(5) did not clearly reopen vested final assessments and that the ambiguous taxing provision should be construed for the subject; he would have retained *Atmala Nagaraj* (SCR pp.43-54; PDF pp.11-22).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The majority allowed the Revenue's five appeals, set aside the Madras High Court's common order, and held the rectification orders effective and binding on the respondents. There was no order as to costs (SCR pp.43, 54; PDF pp.11, 22).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the Revenue. The consequential additions to the five partners' assessments remained operative; the Court did not itself recompute the partners' amounts (SCR pp.43, 54; PDF pp.11, 22).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: in a historical partner/firm rectification problem, identify separately the date of the partner assessment, the date and kind of the final firm order, the statutory commencement date and the special limitation terminus. Devinath makes the post-commencement firm finding decisive under former section 35(5), but that result cannot substitute for reading the transitional language of the presently applicable enactment (based on SCR pp.36-43; PDF pp.4-11).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 22-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 22-page count match catalogue asset 1968_2_33_54; every page was reviewed.

The source verifies Civil Appeals Nos. 2154 to 2158 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 decision interprets section 35(5) of the repealed Indian Income-tax Act, 1922, introduced with effect from 1 April 1952, for assessment year 1943-44. It supplies no present limitation or rectification rule under a later income-tax enactment. No current-law or comprehensive 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.