

Commissioner of Income-tax, Bombay City I, Bombay v. Jubilee Mills Ltd., Bombay

Civil Appeal No. 525 of 1967

[1968] 2 SCR 539 | 1967-12-05

Historical section 23A deemed-distribution proceedings: commercial losses absorbed through a pre-year capital reduction remained relevant to whether declaring a larger dividend was unreasonable, followed by a section 66(5) rehearing direction.

Indian Income-tax Act, 1922: sections 23A(1) and 66(5)

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

Assessment years: 1948-49

Legal issue decided, liability left open

The Court held only that losses absorbed on capital reconstruction could not be excluded as legally irrelevant. It expressly left the Tribunal to decide after rehearing whether the dividend actually declared was nevertheless unreasonable.

Commercial profits context

The section 23A inquiry concerned actual commercial or accounting capacity to distribute dividends, not a mechanical equation with assessable income.

Capital write-off did not erase economic effect

The prior loss no longer appeared as an unadjusted or carried-forward book loss, yet it could still affect financial strength and the reasonableness of retaining profits to rebuild capital.

Procedural consequence matters

Dismissal of Revenue's appeal was coupled with an effective section 66(5) direction. It must not be presented as a final merits discharge of the assessee from section 23A.

Report contains a deemed-dividend figure inconsistency

The headnote at SCR p.539/PDF p.1 prints Rs.3,98,798, while the judgment narrative at SCR p.541/PDF p.3 prints Rs.3,95,798. This note uses the body figure when recounting the officer's order and does not invent a reconciliation.

Historical statute only

The statutory text, deemed-distribution regime and reference mechanism are those of the 1922 Act. Any present application requires independent verification.

01 FACTS OF THE CASE

Jubilee Mills had suffered large losses before 1930. In 1930 it reduced its capital, adjusting a Rs.12,75,000 debit balance in the profit-and-loss account against paid-up capital and reducing the face value of its ordinary and preference shares. For assessment year 1948-49, the company was assessed on Rs.7,47,639; after tax, the section 23A balance available for distribution was Rs.4,20,548. Although a dividend of at least Rs.2,52,358 was prima facie required to avoid section 23A, it declared only Rs.24,750, and the Income-tax Officer deemed Rs.3,95,798 distributed. The Tribunal treated pre-reconstruction losses as wiped out and irrelevant. After an earlier Supreme Court remand on whether the public was substantially interested, the Bombay High Court answered the remaining loss question in the company's favour (SCR pp.540-542; PDF pp.2-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 23A required the Income-tax Officer to consider whether, having regard to earlier losses or the smallness of profit, declaring a larger dividend would be unreasonable. Nothing in its text limited earlier losses to unadjusted or carried-forward amounts still appearing in the books. Commercial or accounting profits, rather than assessable profits alone, supplied the dividend-paying source. Absorbing losses by reducing capital did not remove their effect on the company's later financial position; retaining profits to rebuild crippled capital could be reasonable. The Tribunal therefore misdirected itself by refusing to consider the pre-reconstruction loss at all, although it could still conclude after considering that loss that a larger dividend should have been declared (SCR pp.543-546; PDF pp.5-8). Under section 66(5), disagreement with the Tribunal's legal construction required the Tribunal to rehear the parties and dispose of the appeal conformably with the High Court's opinion, not merely enter a formal order (SCR pp.546-547; PDF pp.8-9).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Supreme Court agreed that the Rs.12,75,000 loss incurred before the 1930 capital reconstruction was relevant under section 23A(1), dismissed Revenue's appeal with costs, and directed that the Tribunal rehear the company and the Commissioner and redetermine the case on the evidence and according to law under section 66(5) (SCR pp.546-547; PDF pp.8-9).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Jubilee Mills on the legal question and against Revenue's categorical exclusion of the earlier loss. The result was not a final merits determination of section 23A liability: the Tribunal was required to rehear and decide that issue (SCR pp.546-547; PDF pp.8-9).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: in a historical reasonableness inquiry tied to dividend-paying capacity, distinguish book elimination of a loss from elimination of its economic effect. Build the record around commercial profits, capital impairment, reserve needs and the actual capacity to distribute. Also classify the relief correctly: this judgment resolved the governing legal approach but returned the ultimate section 23A merits to the Tribunal (based on SCR pp.543-547; PDF pp.5-9).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 9-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 9-page count match catalogue asset 1968_2_539_547; every page was reviewed.

The source verifies Civil Appeal No. 525 of 1967, 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 construes the pre-1955 form of section 23A and the historical reference procedure in section 66(5) of the repealed Indian Income-tax Act, 1922. It does not determine present dividend-tax, accumulated-profit or appellate-remand rules. 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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