

Commissioner of Income-tax, Kerala v. K. B. Kalikutty & Another

Civil Appeal No. 714 of 1966

[1969] 1 SCR 531 | 1968-08-02

Historical balancing charge: whether profit on sale of buses remained taxable under amended section 10(2)(vii) when the sale closed or realised the business.

Indian Income-tax Act, 1922: section 10(2)(vii), second proviso | Taxation Laws (Extension to Merged States and Amendment) Act, 1949: section 11

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

Assessment years: Not stated; previous year ended 16 August 1959

Historical balancing-charge provision

The result depends on the 1949 words added to the second proviso of section 10(2)(vii).

Closing-sale assumption did not decide business transfer

The Court accepted the High Court's closing-sale assumption for argument because the amended text made the amount taxable even then.

Only the bus-profit reference was resolved

Route value, capital-gain treatment and the broader transaction character were not the issue decided in the Supreme Court.

Legal-representative issue left to Tribunal

The Tribunal was expressly left to decide the effect of one respondent's death and non-impleadment of that person's legal representatives.

01 FACTS OF THE CASE

The assessee ran Kumar Motor Service and sold six buses during the previous year ending 16 August 1959 after using them for part of that year. The Income-tax Officer treated Rs.49,288—the excess of the buses' Rs.86,000 sale value over written-down value—as profit under the second proviso to section 10(2)(vii). The Tribunal upheld the charge, but the Kerala High Court assumed the whole business was wound up and answered for the assessee (SCR pp.531-533; PDF pp.1-3).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

Before the 1949 amendment, authorities had required the machinery to be sold while business continued rather than as part of closing or winding up. The amendment inserted the words “whether during the continuance of the business or after the cessation thereof”. Giving those words effect removed that third condition. It was enough that business had been carried on during all or part of the previous year and the machinery had been used in it. Both findings existed here, so even a closing or realisation sale fell within the proviso (SCR pp.533-536; PDF pp.3-6).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court answered the reference affirmatively against the assessee, held Rs.49,288 chargeable, discharged the High Court's answer and allowed Revenue's appeal with costs. It left the separate death and non-impleadment consequence to the Tribunal under section 66(5) (SCR p.536; PDF p.6).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue on the historical balancing-charge question. The bus-sale profit was taxable even on the closing-sale assumption, while the legal-representative issue remained for the Tribunal (SCR pp.535-536; PDF pp.5-6).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: align each cited authority with the precise statutory version. Here a short inserted phrase reversed the relevance of the earlier closing-sale condition. Preserve the unresolved party-procedure point and do not translate this result into modern depreciation or capital-gains treatment without checking the current statute (based on SCR pp.533-536; PDF pp.3-6).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 6-page SCR source asset read in page-preserving text and visually inspected. Adjacent-report boundaries, where present, were distinguished from the target judgment.

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Exact source bytes, SHA-256 and six-page count match catalogue asset 1969_1_531_536; every page was read and visually inspected.

The source verifies Civil Appeal No. 714 of 1966, the stated bench, issue, reasoning and operative result. No exact source-hash, asset-ID, SCR-citation, docket or same-judgment match was found in the published corpus or reviewed release archive.

STATUTORY SCOPE

The ruling construes the amended balancing-charge provision in the repealed Indian Income-tax Act, 1922. It does not state the current tax treatment of asset sales, depreciation recapture, capital gains or business cessation.

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.

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