

Third Income-tax Officer, Mangalore v. M. Damodar Bhat

Civil Appeal No. 1654 of 1967

[1969] 2 SCR 29 | 1968-09-06

Could the Officer use sections 156 and 226(3) of the 1961 Act for a liability assessed under the 1922 Act, issue the garnishee notice before demand-payment time expired for other assessed sums, and resist an unparticularised challenge to the section 220(6) discretion?

156 | 220(1), (4), (6) | 226(3) | 297(2)(j) | 221; 222; 297(2)(g) (quoted context, not independent penalty merits holdings)

Three judges | J.C. Shah, J. | V. Ramaswami, J. | A.N. Grover, J.

Assessment years: 1960-61, 1961-62, 1962-63, 1963-64

Recovery holding expressly doubted later, but not overruled in the retained authority

Damodar Bhat applies the 1961 recovery/savings scheme to an old-Act liability and permits the particular garnishee notice without an assessee-default precondition. Assessments and demand notices already existed. Madan Lal Lohia later expressly doubted early-recovery reasoning but followed the binding three-judge decision; it did not overrule it. The original report contains conflicting amounts and an imprecise chronology description. Recovery machinery changed subsequently. Original judgment PDF unchanged; comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

On 23 April 1965 the Third Income-tax Officer, Mangalore issued a section 226(3) notice to M/s. Rajarajeswari Motor Service, Mangalore concerning amounts due from M. Damodar Bhat. The detailed table records Rs. 7,056.15 tax for 1960-61; Rs. 485.55 tax for 1961-62; Rs. 346.42 balance tax for 1962-63; Rs. 1,890 penalty for 1962-63; and Rs. 64,307.90 tax for 1963-64, totalling Rs. 74,086.02. The High Court quashed the notice as to the first, second, fourth and fifth items. Its quashing list, as reproduced, prints Rs. 7,056.50 and Rs. 64,307.00 for the first and fifth amounts, whereas the detailed table and later judicial discussion use Rs. 7,056.15 and Rs. 64,307.90. The latter figures are used here with the discrepancy disclosed; the Rs. 346.42 balance was not separately adjudicated in that four-item challenge (physical page 3/SCR 31 A-G).

For 1961-62 the assessment proceedings were taken and completed under the 1922 Act. Tax of Rs. 2,947.56 was imposed and demanded; the Appellate Assistant Commissioner reduced it to Rs. 485.55. The Officer then issued a notice dated 11 December 1963 purporting to act under section 156 of the new Act. The judgment states that the thirty-five-day payment period expired on 22 January 1964. Bhat argued that neither a new-Act demand nor new-Act recovery could follow assessment and appeal under the old Act (physical page 8/SCR 36 D-G).

The penalty for 1962-63 and tax for 1963-64 had also been assessed and section 156 demand notices served, but their payment time ran until 21 May 1965. Bhat therefore challenged the 23 April recovery notice as premature. For the 1960-61 amount, an appeal remained before the Appellate Assistant Commissioner; he alleged that the Officer's section 220 order was arbitrary and capricious. The Mysore High Court accepted the challenges to the four items, and the Officer appealed by certificate (physical pages 3,10-11/SCR 31 A-D; 38 D-39 H).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court first distinguished recovery under section 222 from the other modes under section 226. Section 222 expressly depended on the assessee being, or being deemed, in default. Section 226(3) did not impose that condition and allowed a written notice at any time to a person owing or holding money for the assessee. This did not remove the separate statutory limit that the third party could not be required to pay before its money became due or was held. Nor did the case concern wholly unassessed sums without demand notices: the assessments and demands already existed (physical pages 5-6,8-11/SCR 33 G-34 B; 36 H-39 C).

Section 297(2)(j) expressly permitted recovery under the new Act of sums payable under the repealed Act, without prejudice to recovery action already taken under the latter. The High Court's view that no new-Act demand or collection could follow an old-Act assessment would deprive that provision of effect. The appropriate new recovery provisions applied with necessary adaptations, rather than by literal transplantation of every collection provision. The Court therefore upheld both the section 156 demand and the section 226(3) notice for the Rs. 485.55 old-Act liability. Referring to *Kalawati Devi Harlalka*, it explained that the general saving in section 6 of the General Clauses Act does not displace detailed contrary legislative intention. This is a recovery-and-savings holding, not a decision to redo the original assessment under the new Act (physical pages 7-10/SCR 35 B-F; 36 D-38 C).

For the 1962-63 penalty and 1963-64 tax, the Court rejected the argument that the unexpired payment period made the amounts not due for section 226(3). It drew on *Kesoram's* distinction between an existing tax debt and later quantification/payment, and stressed the additional facts here: assessments had been made and demand notices served before the garnishee notice. On that basis it upheld the notice although the time given for payment expired only on 21 May 1965. The rule concerns the specified recovery mechanism and factual sequence; it does not erase every demand, assessment or garnishee-protection requirement (physical pages 10-11/SCR 38 D-39 C).

For the 1960-61 tax, the Court rejected the High Court's finding of arbitrary exercise of discretion because the writ petition supplied no specific particulars. Paragraph 12(b) merely called the section 220 order arbitrary and capricious, and the counter-affidavit denied that allegation. In that pleading posture the High Court could not enquire into an unsupported charge of arbitrariness. The holding does not make recovery discretion immune from judicial review or convert a pending appeal into an automatic stay (physical page 11/SCR 39 D-H).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Supreme Court allowed Civil Appeal 1654 of 1967 with costs, set aside the Mysore High Court judgment dated 1 February 1967, and directed dismissal of Writ Petition 846 of 1965. The challenged section 226(3) notice survived as to the four disputed items. The Court neither reassessed the taxable income nor independently adjudicated the separate Rs. 346.42 tax balance for 1962-63 (physical pages 3 and 12/SCR 31 A-G; 40 A).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue, Third Income-tax Officer, Mangalore

Revenue appeal allowed with costs; High Court judgment set aside; assessee's writ petition dismissed

Reasoned new-Act recovery/savings, absence-of-default-condition and pleading holdings; underlying assessment merits not redetermined

Four disputed items resolved within one recovery notice; no separate merits ruling on the Rs. 346.42 balance. No authority here for recovery without any assessment/demand or without the garnishee's money being due/held.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Build the chronology before applying a recovery precedent: original assessment statute, appellate reduction, demand notice and service, payment deadline, stay request and decision, garnishee notice, and the third party's own debt or holding obligation. Section 297(2)(j) supplied the specific bridge from an old-Act liability to the appropriate new-Act recovery procedure. The result does not authorise a general merger of assessment and recovery provisions or the use of every new substantive provision against an old liability. A challenge alleging arbitrary discretion must identify the relevant facts and defects.

There is express later judicial criticism. In *Madan Lal Lohia v. Assistant Controller* (11 April 1977), a two-judge Bench addressing estate-duty garnishee provisions followed *Damodar Bhat* because its three-judge authority bound it, but stated that its early-recovery reasoning appeared incorrect. The concerns were that tax becomes payable for recovery after the demand-payment period; that section 226(3) speaks of arrears; and that recovery before the time allowed for payment conflicts with the statutory recovery scheme. *Lohia* also rejected the factual demand-notice objection because it had not been raised below, upheld the garnishee notice, separately cancelled a Rs. 3,000 penalty and ordered no costs throughout. This is express doubt while following binding precedent, not an overruling (physical pages 17-19/SCR 505 F-507 E).

Do not lift *Lohia*'s no-demand discussion back into the facts of *Damodar Bhat*: the latter specifically had assessments and demand notices in place. The source of *Lohia* also misattributes *Damodar*'s judgment to *Shah J.*, whereas the original identifies *Ramaswami J.*, and prints an anomalous Act of 1962 reference. Neither error is adopted here.

The later statutory machinery also differs. The retained 2011 government-hosted compilation records substitution of thirty days for thirty-five in section 220(1) from 1 April 1989 and a later division of section 226 powers between the Assessing Officer and Tax Recovery Officer, according to whether a recovery certificate had been drawn up (physical pages 847,852-853/printed 1.806,1.811-1.812). These bounded historical checks do not resolve all later case law, amendments or current recovery requirements. Comprehensive later treatment, present applicability and 2025 mapping remain not verified.

Source: See the proposition-specific paragraph and PDF-page references below.

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1654 of 1967

Outcome: Allowed with costs; judgment in W.P. 846 of 1965 set aside and petition dismissed

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, single appeal, four-item relief and complete five-item notice

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: SCR 29 heading; 30 G-H; 31 A-G

2.

Topic: Quoted old/new demand, default, third-party recovery and savings provisions

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5; 6; 7; 8

Paragraphs: SCR 31 H-36 C; particularly 33 G-34 B and 35 B-F

3.

Topic: Old-Act assessment/appellate reduction and new demand chronology

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: SCR 36 D-G

4.

Topic: No default precondition and section 297(2)(j) adapted recovery procedure

Source url: [Open cited source](#)

Pdf pages: 9; 10

Paragraphs: SCR 37 A-38 C

5.

Topic: Already assessed/demanded sums and unexpired payment period

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR 38 D-39 C

6.

Topic: Unparticularised allegation cannot sustain finding of arbitrary discretion

Source url: [Open cited source](#)

Pdf pages: 11

Paragraphs: SCR 39 D-H

7.

Topic: Appeal allowed with costs and writ petition dismissed

Source url: [Open cited source](#)

Pdf pages: 12

Paragraphs: SCR 40 A

8.

Topic: Lohia expressly doubts but follows binding Damodar authority

Source url: [Open cited source](#)

Pdf pages: 17; 18; 19

Paragraphs: SCR 505 F-507 E; separate unraised-fact ground at 506 A-B

Source role: adverse later commentary not overruling

9.

Topic: Historical payment-period and recovery-authority changes

Source url: [Open cited source](#)

Pdf pages: 847; 852; 853

Paragraphs: Printed 1.806,1.811-1.812; section 220(1), section 226(1),(1A),(3) and amendment footnotes

Source role: historical statutory change

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The Court actually construes new-Act recovery powers and the express savings bridge, rather than merely comparing the two enactments. Assessment and demand steps, default, tax indebtedness and third-party recovery are distinct. The quoted section 297(2)(g) is not the operative recovery bridge.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

V. Ramaswami, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, sections 156, 220(6), 226(3) and 297(2)(j), applied to recovery including an old-Act liability

SPECIFIED LATER DECISION AND LIMITS OF THE CHECK

1.

Asset id: 1977_3_489_507

Title: Madan Lal Lohia v. Assistant Controller & Others

Decision date: 1977-04-11

Classification: Express doubt while following binding three-judge authority; not overruling

Source url: [Open cited source](#)

Pdf pages: 17; 18; 19

Pinpoint: SCR 505 F-507 E

Holding limit: Estate-duty garnishee context; unraised factual objection separately rejected. Criticises early recovery before demand-payment deadline but follows Damodar as binding. Neither wholesale approval nor overruling.

Bounded check: verified only within explicit read bounds

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922, section 29 (demand provision quoted; old assessment/appellate proceedings for 1961-62); General Clauses Act, 1897, section 6 (general saving subject to contrary detailed legislative intention); Constitution of India, Article 226 (High Court writ proceedings)

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 12 PDF pages; SHA-256
ebb8bd7322769fae2fbdfd9107fc27aed4b1027b659588a2379ea96c88095477. Original bytes preserved.

Open cited source rendition

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

The original heading prints 6 September 1968; 1969 is the report year. Catalogue identifier 1968INSC230 is not independently printed or authenticated in this rendition.

The judgment is dated 6 September 1968; 1969 is the report year.; Only the 1961-62 assessment and appeal are expressly described as taken and completed under the 1922 Act. The 1961 Act recovery/savings holding is operative, not incidental.; SCR 31 prints Rs. 7,056.50 and Rs. 64,307.00 in the High Court relief list, but Rs. 7,056.15 and Rs. 64,307.90 in the complete notice table and the Court's later analysis. The table and operative analysis control the figures used in this note, with the conflict disclosed.; The complete notice also contains Rs. 346.42 balance tax for 1962-63; it is not in the four-item High Court quashing list and is not separately adjudicated.; The report states a demand notice dated 11 December 1963 and payment-period expiry on 22 January 1964. No service date is supplied, so no different expiry is calculated. The description nearly two years before 23 April 1965 is imprecise; the printed dates are retained.; The primary already had assessments and demand notices. Absence of a default precondition in section 226(3) is not a holding that assessment, demand and the third party's money-due requirement can all be dispensed with.; Section 297(2)(g) is quoted, but the operative old-liability recovery bridge is section 297(2)(j).; The High Court arbitrariness finding failed for want of specific writ particulars and a denied allegation, not because statutory discretion is unreviewable.; Lohia follows binding three-judge precedent while expressly doubting it. Its SCR 506 author attribution to Shah J. and SCR 507 Act of 1962 wording are source errors, not adopted facts.; Historical thirty-five-day demand language and recovery-authority descriptions changed later. The 2011 compilation does not certify current law.

The recovery table contains tax for all four years and a separate 1962-63 penalty. Only the 1961-62 assessment and appellate proceedings are expressly stated to have been taken and concluded under the 1922 Act. The Court's operative recovery/savings and default analysis is under the 1961 Act. The separate Rs. 346.42 1962-63 tax balance appears in the full notice but not in the High Court's four-item quashing list.

Certificate appeal from the Mysore High Court judgment dated 1 February 1967 in Writ Petition No. 846 of 1965. The case concerns one recovery notice containing several assessment-year liabilities, not several separately numbered Supreme Court appeals.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 crosswalk. Complete amendments, commencement, savings and case-specific present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. not_verified. Madan Lal Lohia expressly doubts the early-recovery reasoning but follows Damodar Bhat as binding three-judge authority in an estate-duty garnishee setting. This is adverse commentary, not overruling. No exhaustive later-treatment or present-law conclusion is claimed.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 12](#)

SHA-256: ebb8bd7322769fae2fbdfd9107fc27aed4b1027b659588a2379ea96c88095477

[later reported judgment bounded - PDF pages: 19](#)

SHA-256: 4e10b76a838788039f6f98cea64a2ceb8cf29e99014c6fb92df5e0df53da95c0

[official government hosted statutory compilation bounded - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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