

Oriental Investment Co. (P) Ltd. v. Commissioner of Income-tax, Bombay

Civil Appeals Nos. 651 to 655 of 1967

[1969] 2 SCR 46 | 1968-09-10

Historical income-tax reference procedure and the dealer-versus-investor inquiry: characterisation of share, security and property transactions was a mixed question of law and fact, so the earlier 'any material' formulation was replaced and a fresh Tribunal statement and High Court hearing were directed without deciding the tax merits.

Indian Income-tax Act, 1922: sections 22(1), 66(1) and 66(2) | Excess Profits Tax Act, 1940: section 26(1) (background only)

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

Assessment years: 1943-44, 1944-45, 1945-46, 1946-47, 1948-49

Tax merits expressly left open

The Court did not decide whether Oriental Investment was a dealer or an investor or whether its gains and losses were business profits.

Second Supreme Court stage

This appeal followed an earlier Supreme Court remand. The Court corrected its own earlier 'materials on record' wording because that formulation treated a mixed question as if it were only factual.

Primary facts remain binding

On a mixed question the High Court had to accept the Tribunal's primary factual findings but could examine whether the relevant legal principles were correctly applied to them.

Appeal allowed but costs adverse

Although the assessee secured a fresh reference, it was ordered to pay Revenue's costs of the Supreme Court appeal; the procedural result should not be reported as a substantive tax victory.

01 FACTS OF THE CASE

Oriental Investment, incorporated in 1924, held substantial shares, securities and properties and had long transaction histories involving the Sassoon group. Before 1940 it claimed dealer status unsuccessfully; for 1940-41 to 1942-43 Revenue accepted that status. After filing its 1943-44 return on that basis, it filed a revised return asserting investor status and relied on a Central Board of Revenue excess-profits-tax order. The Income-tax Officer, first appellate authority and Tribunal treated it as a dealer, the Tribunal relying principally on its memorandum powers and earlier assertions. In 1957 the Supreme Court held the dealer/investor characterisation to be mixed law and fact, but formulated questions asking whether any material supported the finding. The Tribunal stated a case, and in 1966 the Bombay High Court answered those questions against the assessee, leading to these five appeals concerning 1943-44 to 1948-49 excluding 1947-48 (SCR pp.47-51; PDF pp.2-6).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

The questions as previously framed allowed Revenue to point to some material-the company's earlier assertions and memorandum power-even though they did not capture the real controversy about the legal effect of the transactions and surrounding circumstances. A pure factual conclusion is ordinarily final in a section 66 reference unless challenged for absence of evidence, perversity or rational impossibility. A mixed conclusion is different: it rests on primary facts, which remain binding, but its ultimate character is determined by applying legal principles. The High Court may therefore examine whether the Tribunal applied the correct law, just as it would on a pure legal point. Dealer-versus-investor classification was such a mixed question. The earlier 'whether there are any materials' formulation mistakenly suggested only a factual inquiry and had to be replaced (SCR pp.52-54; PDF pp.7-9).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court allowed the appeals, set aside the Bombay High Court's 2 March 1966 judgment and directed the Tribunal to state a fresh case on whether the assessee could rightly be treated as a dealer in investments and properties and whether its transaction profits and losses could be taxed as business profits. The High Court was then to dispose of the reference according to law. The Court expressed no merits opinion, requested expedition and ordered the appellant to pay Revenue's Supreme Court costs (SCR p.54; PDF p.9).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

Procedural relief for Oriental Investment/the assessee: it obtained correctly framed mixed questions and a fresh reference, but the dealer-versus-investor and business-profit merits remained open, and the assessee bore the Supreme Court costs (SCR pp.53-54; PDF pp.8-9).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: separate primary facts from the legal character assigned to them. For a dealer-versus-investor dispute, preserve transaction-level evidence-acquisition purpose, frequency, holding periods, financing, accounting treatment, organisational activity and disposal circumstances-then formulate the appellate question to challenge the legal application, not merely the existence of some evidence. Confirm the governing present appellate provision independently; this historical remand did not decide the underlying tax liability (based on SCR pp.51-54; PDF pp.6-9).

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 1969_2_46_54; every page was reviewed.

The source verifies Civil Appeals Nos. 651 to 655 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 ruling construes the repealed reference mechanism in section 66 of the Indian Income-tax Act, 1922. Its distinction among fact, law and mixed law-and-fact questions is tied to that procedural setting. It does not decide the current appellate standard, section 260A practice, or the ultimate dealer-versus-investor classification on these facts. 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.

PROFESSIONAL DISCLAIMER

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.