

Income Tax Officer v. M.K. Mohammed Kunhi

Civil Appeal No. 1164 of 1966

[1969] 2 SCR 65 | 1968-09-11

Did the Tribunal's statutory appellate jurisdiction carry an incidental power to stay recovery of the penalties pending appeal, despite the absence of an express stay provision, and within what limits?

254(1) | 255(5)-(6) (procedure and limited court powers) | 220(6) (earlier appellate stage) | 271(1)(c) and 274(2) (penalty facts) | 156; 220(1); 221-225; 229; 246; 252-253; 131 (statutory context)

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

Assessment years: 1954-55, 1960-61, 1961-62

Historical stay jurisdiction with later statutory and judicial limits

Kunhi recognises a power to consider stay in deserving cases with a strong prima facie case; it does not itself grant stay or delete penalties. Bansi Dhar confines the High Court reference-jurisdiction analogy. Later section 254(2A) introduces time, application and deposit/security conditions, while Pepsi Foods qualifies fault-blind expiry; neither this judgment nor a bare statutory web reproduction establishes unrestricted present stay power. The later amendment chain is not fully authenticated. Original judgment PDF unchanged; comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

M.K. Mohammed Kunhi was subjected to penalties of Rs. 18,000, Rs. 1,700 and Rs. 14,000 for assessment years 1954-55, 1960-61 and 1961-62 respectively. The judgment identifies sections 271(1)(c) and 274(2) of the 1961 Act as the penalty provisions and describes concealment of income particulars and furnishing inaccurate particulars. It does not determine whether those penalty allegations were proved (physical page 2/SCR 66 C-D).

The assessee appealed to the Income-tax Appellate Tribunal and sought an interim stay of collection. The Tribunal declined because it considered itself without power to grant stay, rather than deciding whether the merits justified interim protection. On the assessee's Article 226 petition, the Kerala High Court held that stay was incidental and ancillary to the Tribunal's appellate jurisdiction and directed the Tribunal to dispose of the stay application according to law. The Income Tax Officer appealed by special leave. The respondent did not appear in the Supreme Court (physical pages 1-2/SCR 65 H-66 F).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court examined the then demand, default, recovery and appellate scheme. Section 156 required a notice of demand; the historical section 220(1) ordinarily allowed thirty-five days for payment. Section 220(6) allowed the Income-tax Officer to treat the assessee as not in default while an appeal under section 246 was pending before the Appellate Assistant Commissioner. That statutory route did not cover an appeal before the Tribunal. The Court acknowledged that payment-time extensions under section 225, or departmental administrative practice, might afford relief, but neither was equivalent to the statutory protection available at the earlier appellate stage (physical pages 2-4/SCR 66 F-68 F).

No provision of the Act or the 1963 Tribunal Rules then expressly conferred on the Tribunal a power to stay recovery. Section 255(6), through section 131, supplied specified civil-court powers concerning evidence and process; that did not itself settle the stay question. Section 254(1), however, gave the Tribunal broad judicial appellate authority to pass such orders on the appeal as it thought fit after hearing both parties. An express grant of that jurisdiction carried the reasonable incidental powers necessary to make it effective. Otherwise immediate collection of very large demands could defeat the appeal even where the assessment or penalty was later set aside (physical pages 3-5/SCR 67 C-69 H).

The Court used general principles of statutory implication and analogous appellate decisions, including transport and revenue proceedings. Although the Tribunal is not a court, it exercises judicial powers. The discussion distinguishing the taxing and procedural parts of a statute supports effective appellate procedure; it is not a general equitable power to waive the substantive tax charge. The English statement that disputed tax was not payable during appeal could not assist because it depended on different statutory provisions (physical pages 5-8/SCR 69 C-72 B).

The operative foundation was section 254 appellate jurisdiction. The Court expressly doubted whether a stay power could be derived from section 255(5), which permits regulation of procedure. Nor was stay to be routine. A strong prima facie case was needed before the Tribunal would consider protection and its conditions; relief was reserved for deserving and appropriate cases where continued recovery would frustrate the appeal or make eventual success ineffective. The revenue implications and safeguards remained important (physical page 8/SCR 72 B-G).

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

03 JUDICIAL DECISION

The Supreme Court upheld the Tribunal's incidental and ancillary power to stay recovery pending appeal and dismissed Civil Appeal 1164 of 1966. The parties were left to bear their own costs. The High Court's direction to consider the stay application according to law therefore stood. The Supreme Court did not itself grant stay, prescribe a deposit amount, cancel a penalty, or decide any of the underlying penalty appeals (physical pages 2 and 8/SCR 66 D-F; 72 C-H).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on the jurisdictional question

Revenue appeal dismissed; Tribunal to decide stay application according to law; parties bear own costs

Reasoned declaration of historical 1961 Act appellate jurisdiction; penalty merits and individual stay entitlement undecided

Power to consider stay is not a grant of stay. No present unrestricted stay jurisdiction, automatic suspension of recovery, or penalty-merits relief.

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

05 AKHB REVIEW POINT

Separate the existence of jurisdiction from the evidence supporting interim relief. A stay request should identify the appellate proceeding, show a strong prima facie case, explain how recovery would defeat effective appellate relief, and address conditions protecting revenue. Kunhi supplies the historical jurisdictional foundation; it does not eliminate the need for an application and a reasoned decision or validate the underlying penalties.

Bansi Dhar & Sons (19 December 1985) expressly limits one possible reading of Kunhi. The reference to Polliseti Narayana Rao in Kunhi did not approve a High Court power to stay recovery merely within its advisory reference jurisdiction. Bansi Dhar kept the Tribunal's appellate power distinct from sections 66/256 reference proceedings and from appropriate Article 226/227 correction of jurisdictional error (physical pages 14-15 and 21-22/SCR 863-864, 870-871). This is a jurisdictional qualification, not an overruling of the Tribunal's incidental power.

Later legislation must be read separately. Pepsi Foods (6 April 2021) expressly recalls Kunhi, reproduces the 2001, 2007 and 2008 section 254(2A) time-limit changes, and rejects fault-blind vacation of stay. Its paragraph 25 directs that stay expires under the relevant proviso only where delay is attributable to the assessee; paragraphs 6-8, 10 and 17 explain the historical and constitutional setting (physical pages 8-10, 13, 21-22 and 30). This is not an automatic extension of every stay or a ruling dispensing with all independent conditions.

A retained Income-tax Department web reproduction of section 254(2A) additionally contains a first-proviso condition of a deposit of at least twenty per cent of the specified payable amount, or security of equal amount, and application/compliance/non-attributable-delay requirements for extension. It also still reproduces the fault-blind third-proviso words qualified by Pepsi Foods, so the bare web text must not be used alone. The original amending Act and its effective-date chain were not independently authenticated here. Verify the governing version and judicial treatment for the particular application; this note does not certify current law, comprehensive later treatment or 2025 mapping.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1164 of 1966

Outcome: Dismissed; High Court stay-application direction sustained; own costs

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, appeal, penalty years/amounts and High Court direction

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR 65 heading and H; 66 A-F

2.

Topic: Historical demand/default/recovery scheme and departmental alternatives

Source url: [Open cited source](#)

Pdf pages: 2; 3; 4

Paragraphs: SCR 66 F-68 F

3.

Topic: Section 254 statutory implication and effective appellate jurisdiction

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5; 6

Paragraphs: SCR 67 C-70 H

4.

Topic: Earlier authority and English-law comparison kept within limits

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR 71 B-72 B

5.

Topic: Section 255 doubt, strong prima facie case, conditions and own-costs dismissal

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: SCR 72 B-H

6.

Topic: Bansi Dhar expressly limits High Court reference-stay inference

Source url: [Open cited source](#)

Pdf pages: 14; 15; 21; 22

Paragraphs: SCR 863-864; 870-871

Source role: later judicial qualification

7.

Topic: Pepsi Foods recalls Kunhi and historical stay provisions

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 13

Paragraphs: Paragraphs 6-8 and 10; SCR 8-10,13

Source role: later judicial treatment

8.

Topic: Pepsi Foods constitutional reasoning and exact operative qualification

Source url: [Open cited source](#)

Pdf pages: 21; 22; 30

Paragraphs: Paragraphs 17 and 25; SCR 21-22,30

Source role: later judicial qualification

9.

Topic: Historical section 254(2A) changes

Source url: [Open cited source](#)

Pdf pages: 910; 911

Paragraphs: Printed 1.869-1.870, section 254(2A) and footnotes 19-22

Source role: historical statutory change

10.

Topic: Later deposit/security and extension wording, read subject to Pepsi Foods

Source url: [Open cited source](#)

Pdf pages:

Paragraphs: Non-PDF retained section 254(2A), first to third provisos; no original amending-Act/effective-date certification

Source role: bounded statutory reproduction

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Eligibility rests on the Court's own law-declaring construction of section 254. The section 255(5) procedural power was expressly regarded as a doubtful independent foundation for stay. Modern section 254(2A) conditions were not before this 1968 Court.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A.N. Grover, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961: historical section 254 appellate jurisdiction and incidental stay power

SPECIFIED LATER DECISION AND LIMITS OF THE CHECK

1.

Asset id: S 1985 3 850 871

Title: Commissioner of Income Tax, Delhi v. Banshi Dhar & Sons

Decision date: 1985-12-19

Classification: Express jurisdictional qualification; not overruling

Source url: [Open cited source](#)

Pdf pages: 14; 15; 21; 22

Pinpoint: SCR 863-864; 870-871

Holding limit: Kunhi's Polliseti reference is not approval of inherent High Court stay power in advisory tax-reference proceedings. Appellate and appropriate constitutional jurisdictions remain distinct.

Bounded check: verified only within explicit read bounds

2.

Asset id: 2021_4_1_30

Title: Deputy Commissioner of Income Tax v. Pepsi Foods Ltd.

Decision date: 2021-04-06

Classification: Express later reliance plus statutory and constitutional qualification

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 13; 21; 22; 30

Pinpoint: Paragraphs 6-8,10,17,25

Holding limit: Historical time-limit evolution and invalidity of fault-blind expiry. Does not decide all independent deposit/security conditions or certify current law.

Bounded check: verified only within explicit read bounds

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Income-tax Appellate Tribunal Rules, 1963 (absence of express stay rule); Constitution of India, Article 226 (High Court proceedings); Indian Income-tax Act, 1922, section 45 (earlier authority discussed); Code of Civil Procedure and Motor Vehicles Act appellate principles (analogies, not governing assessment provisions)

BOUNDED NON-PDF SOURCES AND READING LIMITS

1.

Kind: retained official web statutory reproduction bounded

Title: Income-tax Department section 254, retained web reproduction

Url: [Open cited source](#)

Filename: Not stated in the reviewed record

Sha256: Not stated in the reviewed record

File bytes: Not stated in the reviewed record

Pdf pages: Not stated in the reviewed record

Physical text pages read:

Physical image pages read:

Bounded read complete: True

Full document read: False

Read bounds: Retained JSON HTML and text inspected locally; reliance confined to section 254(2A) and its three provisos. This is non-PDF web material, with no claimed PDF page count or source PDF hash.

Reliance limit: Evidence of reproduced later 180-day, deposit/equal-security and extension wording only. The reproduction still contains the fault-blind third-proviso wording judicially qualified in Pepsi Foods; it cannot be read alone as current law. No independent verification of Finance Act 2020 amendment text/effective date, unrelated 2026 changes, comprehensive amendments, current applicability or 2025 mapping.

Provenance: Pre-existing retained official-site reproduction identified by sourceUrl; cache metadata states sourceModified 2026-07-13T07:52:51Z and retrieved 2026-10-05. No fresh live-source integrity check is asserted. The stored sourceHash is not adopted as a file, HTML, text or PDF hash.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 8 PDF pages; SHA-256

d7dbdfb67d203e56dd330f1a3046a5913ba25e114d1afc8826654c60e78fdf0c. 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 11 September 1968; 1969 is the report year. Catalogue identifier 1968INSC236 is not independently printed or authenticated in this rendition.

The decision is dated 11 September 1968, although reported in 1969.; The old assessment years do not convert the Court's actual 1961 appellate-jurisdiction holding into a 1922-only case; substantive penalty transition and penalty merits were not adjudicated.; The respondent was absent. Dismissal with own costs preserved consideration of the stay application, not an order granting stay.; The source's section 255(5) discussion expresses doubt; the ratio rests on section 254 appellate jurisdiction.; The judicial discussion permits possible section 225 extensions and administrative relief; do not expand the headnote's compressed statement into a denial of every departmental power.; The English-law no-payment-during-appeal statement is expressly rejected as assistance, not adopted.; The thirty-five-day demand period and the originally silent stay scheme are historical; the 2011 compilation and later web reproduction must not be mistaken for the 1968 text.; Banshi Dhar expressly denies that Kunhi approved Polliseti's High Court reference-stay proposition.; The retained section 254 web text includes words judicially qualified by Pepsi Foods and unrelated later material; only bounded subsection (2A) wording is used. The original Finance Act 2020 text, commencement and full present statutory position are not authenticated.

The three penalty amounts and years are expressly given in the judicial facts. Although the years predate the 1961 Act's commencement, the Court expressly describes penalties under sections 271(1)(c)/274(2) and decides the Tribunal's 1961 Act appellate jurisdiction. It does not separately adjudicate the substantive transitional validity or merits of the penalties.

Special-leave appeal from the Kerala High Court judgment and order dated 27 September 1965 in O.P. No. 688 of 1965. Underlying Tribunal appeal numbers are not supplied. The respondent did not appear before the Supreme Court.

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. Bounded primary checks establish Banshi Dhar's reference-jurisdiction qualification and Pepsi Foods' express reliance on Kunhi alongside statutory time limits and constitutional qualification. The bounded checks did not identify a whole-case overruling; this is not an exhaustive citator result.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 8

SHA-256: d7dbdfb67d203e56dd330f1a3046a5913ba25e114d1afc8826654c60e78fdf0c

later reported judgment bounded - PDF pages: 22

SHA-256: 0d2fc8efe95b15df64c2bda23d84bac6e27ff002b09e1a2b0039bed348a1c481

[later reported judgment bounded - PDF pages: 30](#)

SHA-256: 13c8c8bb191f4ad64749a17362cc9fefa4b886862b9dead7fe3fdd9bcb1b4456

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SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[Income-tax Department section 254, retained web reproduction](#)

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