

Commissioner of Income-tax, Bihar & Orissa, Patna v. Kirkend Coal Company

Civil Appeal No. 2456 of 1966

[1969] 3 SCR 983 | 1969-03-12

Historical firm-penalty procedure: section 44 applied only when the business was discontinued, while reconstitution or succession fell under section 26; but the Court would not decide an unargued sections 26/28 basis merely because the broadly framed reference question could encompass it.

Indian Income-tax Act, 1922: sections 2(2), 3, 23, 25, 26(1), 26(2), 28(1)(c), 44 and 66

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

Assessment years: 1948-49

Dismissal was reference-limited

The Court did not determine whether sections 26 and 28 authorised the penalty against the reconstituted firm. It declined to enter that enquiry because it had not been raised or argued below, even though the reference question was linguistically broad enough to include it.

Section 44 premise rejected

The Tribunal and High Court were held wrong to proceed on section 44: on the facts the business continued, and section 44 concerned discontinuance rather than mere dissolution, reconstitution or succession.

Penalty treated as assessment

Under the 1922 Act scheme considered here, assessment in Chapter IV included penalty proceedings and a firm could be a person for section 28. This historical conclusion should not be restated as a free-standing present-law rule.

Source boundary

The six-page PDF begins with this case's headnote and ends with its dismissal order; no adjacent-report text was treated as part of the judgment.

01 FACTS OF THE CASE

For AY 1948-49 the Income-tax Officer added Rs.1,60,000 as undisclosed receipts and then imposed a Rs.60,000 penalty under section 28(1)(c). The firm carrying on the business in calendar year 1947 was dissolved when a partner died on 7 July 1951; a successor firm continued the same business from 8 July 1951, and from 28 April 1952 there was another change in constitution without discontinuance. The Tribunal rejected the firm's jurisdictional objection. On a section 66 reference, supplemented with findings about the successive constitutions, the Patna High Court held that penalty could be imposed only on the original firm and not the firm constituted in 1952 (SCR pp.984-985; PDF pp.2-3).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court held that section 44 was confined to discontinuance of the business, not dissolution while the business continued. Reconstitution was governed by section 26(1), and succession by section 26(2). Drawing on Shivram Poddar and related authority, it explained that the 1922 Act treated the firm as an assessment unit whose tax personality could survive reconstitution; penalty proceedings were part of assessment, and a firm was a person for section 28 (SCR pp.985-988; PDF pp.3-6). But neither the Tribunal nor the High Court had investigated whether sections 26 and 28 made the later partners or reconstituted firm liable for the earlier firm's default. A section 66 reference could answer only questions raised or argued before the Tribunal, not a new matter simply because broad wording might cover it (SCR p.988; PDF p.6).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court held that section 44 had been wrongly treated as the source of power because there was no discontinuance of the business. It declined to decide the unraised alternative basis under sections 26 and 28 and dismissed Revenue's appeal, with no order as to costs (SCR p.988; PDF p.6).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Kirkend Coal Company/respondent on the appeal, but only procedurally and within the section 66 reference record. The possible substantive liability of the reconstituted firm under sections 26 and 28 was expressly left undecided (SCR p.988; PDF p.6).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: separate three questions before analysing a historical firm penalty—whether the business stopped, whether only the firm's constitution or ownership changed, and which statutory provision was actually invoked and contested in the reference record. A court's rejection of the pleaded statutory route does not decide an unargued alternative route; a dismissal on that basis should not be presented as a substantive immunity from penalty (based on SCR pp.985-988; PDF pp.3-6).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 6-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 6-page count match catalogue asset 1969_3_983_988; every page was reviewed.

The source verifies Civil Appeal No. 2456 of 1966, 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 decision construes the repealed Indian Income-tax Act, 1922 and the reference jurisdiction then exercised under section 66. It does not establish present penalty liability, present treatment of firm reconstitution or current appellate/reference procedure. No later-treatment or current-law 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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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.