

Hirday Narain v. Income-tax Officer, Bareilly

Civil Appeal Nos. 193 and 448 of 1970 — Assessee special-leave appeals concerning writs to rectify two assessments and connected proceedings (full list below)

[1971] 1 SCR 683 | 1970-07-21

Where an apparent mistake and the conditions for rectification were established, the officer had a duty to exercise section 35 power; he could not refuse relief by changing the assessed HUF status without due process.

1922 Act: 16(3)(a)(ii) | 1922 Act: 35 | 1922 Act: 33A | 1922 Act: 25A (partition context)

2 Judges | J. C. Shah | K. S. Hegde

01 FACTS OF THE CASE

Hirday Narain and his five sons had constituted an HUF whose property was partitioned on 19 November 1949. For 1951–52, an appellate order separated ₹18,520 earned before partition from the remaining income. The officer assessed the balance of ₹1,06,156 as HUF income but included minor sons' partnership income under section 16(3)(a)(ii), which addressed an individual's assessment. On a section 35 application he accepted that the provision did not apply to an HUF, yet refused rectification because he thought Hirday should have been assessed individually. The High Court rejected writ relief, relying on the unexercised revision remedy and a supposedly discretionary rectification power. The companion appeal concerned 1952–53.

Source: [SCR 684–687: partition, assessments, application and family status.](#)

02 DISCUSSION BY THE HON'BLE COURT

Shah J found an existing HUF consisting initially of Hirday and his wife, with an infant son joining during the previous year. Two male members were not indispensable to HUF tax status. The appellate order had separated the old family's income, not directed conversion of the later assessment to individual status. Nor was there clear evidence that the return had been filed individually. The officer could not defeat the admitted rectification claim by changing the basis of assessment without investigation and notice. On remedy, the High Court had entertained and heard the writ petition when revision was still available; failure to seek revision did not justify dismissing that entertained petition as non-maintainable. On section 35, an enabling power conferred to enforce a right carries a duty to exercise it appropriately when a person entitled to apply establishes the necessary circumstances. Mere satisfaction that proceedings were substantially fair did not permit leaving an apparent error uncorrected.

Source: [SCR 686–689: HUF status, notice, alternative remedy and power coupled with duty.](#)

03 JUDICIAL DECISION

The Court set aside the High Court orders and directed writs requiring deletion of the minor sons' income included under section 16(3)(a)(ii) for both years. It did not authorise unrestricted rehearing of disputed assessments or dispense with the apparent-mistake condition. Its treatment of the alternative remedy depended on the petition's actual procedural history.

Source: [SCR 688B–689G: admitted error and rectification duty.](#)

04 OUTCOME / IN WHOSE FAVOUR

Both appeals allowed; rectification writs directed. Minor sons' income improperly clubbed into the HUF assessments was to be deleted. Assessee awarded costs in the Supreme Court and High Court, one hearing fee. Rectification entitlement established on this record.

Source: [SCR 689F-G: writs for both assessment years and costs.](#)

05 AKHB REVIEW POINT

Locate the apparent error in the operative assessment and distinguish correcting it from changing another foundational issue. Modern rectification provisions contain express notice, time and subject-matter limits. The judgment supports performance of an established statutory duty, not a right to use rectification as a substitute for every appeal.

Source: [SCR 687-689: impermissible status change and conditions for duty.](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal Nos. 193 and 448 of 1970 — Assessee special-leave appeals concerning writs to rectify two assessments / Second Appeal Nos. 12 and 13 of 1962 — Originating High Court proceedings; not additional Supreme Court appeals

SOURCE & VERIFICATION

Original reported Supreme Court judgment

7-page retained public-mirror SCR report. The complete report was read as text and page images. The acquisition URL is preserved provenance; current endpoint availability and authentication as a signed original are not newly verified. All seven physical text/image pages SCR683-689; headnotephysical1-2, Shah opinionphysical2-7; no adjacent case. Bareilly printed title. First-page folio absent; subsequent684-689. Internal dates November10physical4 and1940physical5 conflict repeated19November1949. Physical7 paragraph about duty has visibly broken text; clear surrounding discussion and operative writ relied upon. Appeals193and448/1970; HC SecondAppeals12/13of1962.

Open cited source rendition

First physical page has no visible folio; following pages 684-689 establish report sequence.

SCR 686 once prints November 10; SCR 687 once prints 1940. Repeated account and operative reasoning use 19 November 1949.

SCR 689 contains a visibly broken sentence repeating discretionary language; clear surrounding reasoning rejects discretion to leave an established apparent mistake uncorrected.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 16(3)(a)(ii), 35, 33A, 25A (partition context)

Section 154(2)(b) expressly requires rectification of an apparent mistake brought to notice, subject to the section; subsection (3) protects against adverse amendment without notice. Its appeal/revision carve-out and time limits still apply.

Section 287(3)(b) and (4) similarly combine a duty concerning an established mistake with notice for adverse amendment, alongside their subject-matter, four-year and six-month limits. No current HUF-clubbing outcome is inferred.

The operative historical law governs this holding. The 2025 Act generally commences on 1 April 2026; the selected section 536 savings preserve earlier operations, rights and specified proceedings for earlier tax years. Only stated passages and versions were read. No complete savings, amendment-history or present-case applicability assessment is claimed.

Other provisions addressed: Constitution of India, Article 226

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment is adopted; this is not a finding that later treatment is absent.

Comprehensive subsequent history and present-law applicability remain unverified.

Primary authorities cited within this judgment are not later-use evidence.

IDENTIFIED SOURCE LINKS

[Income-tax Act, 2025: commencement and selected savings](#)

As amended by Finance Act, 2026 1(1)-(3), web0-13; 536(1), (2) intro/(a)-(e), 24385-24408 and (3)-(4), 24597-24601; not whole 536. Exact stated retained text read personally. No raw statutory PDF/HTML or page-image reading, whole-Act review or automatic present-case applicability is asserted.

[Income-tax Act, 1961: rectification](#)

Displayed 2025 Complete 154(1), (1A), (2)-(8), web63-89 and footnote 93. Exact stated retained text read personally. No raw statutory PDF/HTML or page-image reading, whole-Act review or automatic present-case applicability is asserted.

[Income-tax Act, 2025: rectification](#)

As amended by Finance Act, 2026 Complete 287(1)-(9), web15449-15486. Exact stated retained text read personally. No raw statutory PDF/HTML or page-image reading, whole-Act review or automatic present-case applicability is asserted.

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