

Shree Krishna Agency Ltd. v. Commissioner of Income Tax, Central, Calcutta

Civil Appeal Nos. 1837 and 1838 of 1968

[1972] 1 SCR 368 | 1971-08-24

Historical public-interest company test: director discretion does not by itself eliminate free share transferability.

Indian Income-tax Act, 1922: section 23A and Explanation; corresponding pre-1955 provision | Indian Companies Act, 1913; company Article 37

2-judge bench | K. S. Hegde, J. | A. N. Grover, J.

Assessment years: 1952-53, 1954-55

Article alone insufficient; actual restrictions remain relevant

The ruling concerns the free-transferability limb of the historical section 23A test. Evidence that directors actually eliminated free transferability could change the result. It does not establish that every public company satisfies every statutory public-interest condition.

01 FACTS OF THE CASE

Article 37 empowered the public company's directors to decline registration of share transfers without giving reasons. The officer treated the company as one in which the public were not substantially interested for section 23A. The Tribunal accepted the company's position that Article 37 did not bar free transferability; the Calcutta High Court reversed that view, following Tona Jute. The two appeals concerned AYs 1952-53 and 1954-55.

Source: [SCR pp. 369-370 / PDF pp. 2-3](#)

02 DISCUSSION BY THE HON'BLE COURT

Transferability is not identical to proof of completed transfers. The directors' power, despite broad wording, was fiduciary and had to be reasonably exercised for the company's interests, not arbitrarily. Without cogent material of misuse or other restrictive articles, its mere existence did not destroy free transferability. The Court approved the contrary Madras and Bombay approaches and rejected the Calcutta reasoning. It expressly recognised that actual exercise eliminating free transferability could lead to a different conclusion.

Source: [SCR pp. 370-372 / PDF pp. 3-5](#)

03 JUDICIAL DECISION

Both appeals were allowed, the High Court decision was set aside and each referred question was answered in favour of the assessee and against Revenue. The assessee received one set of costs in the Supreme Court.

Source: [SCR p. 372 / PDF p. 5](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the company on the Article 37/free-transferability issue. No factual abuse was established in this case. The judgment is not a finding that directors may refuse transfers without legal constraint.

Source: [SCR pp. 371-372 / PDF pp. 4-5](#)

05 AKHB REVIEW POINT

AKHB analysis: examine both the articles and actual transfer practice. Keep a distinction between a protective fiduciary discretion and evidence of restrictions which in fact defeat transferability. Identify the precise assessment-year definition and other statutory conditions before using this historical section 23A result for a modern company-classification question.

Source: [SCR pp. 370-372 / PDF pp. 3-5](#)

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STATUTORY SCOPE

Historical statute and assessment facts control. No automatic Income-tax Act, 2025 crosswalk or present-law certification.

LATER TREATMENT

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