

Commissioner of Income Tax, Madras v. M/s. Khoday Eswarsa & Sons

Civil Appeal No. 648 of 1967 — Revenue special-leave appeal against refusal to direct a reference / Civil Petition No. 10 of 1966 — Originating High Court proceedings; not additional Supreme Court appeals

[1972] 1 SCR 846 | 1971-09-22

Under the historical section 28(1)(c), assessment additions alone did not establish conscious concealment; the Tribunal's supported factual findings raised no referable question of law.

1922 Act: 28(1)(c) | 1922 Act: 66(1) | 1922 Act: 66(2)

2 Judges | C. A. Vaidialingam | P. Jaganmohan Reddy

01 FACTS OF THE CASE

The Revenue sought a reference concerning cancellation of a ₹35,000 concealment penalty for AY 1955-56. The firm manufactured several products, including liquor, pharmaceutical preparations and chemicals. Its returned taxable income was ₹51,214; after additions and appeal the assessment stood at ₹2,09,575. The surviving penalty allegations concerned pharmaceutical and chemical transactions. The officer inferred illicit alcohol sales and unaccounted chemical sales from the assessment material. The appellate officer removed three other alleged concealed items but retained the entire penalty. The Tribunal cancelled it, then refused a reference; the Mysore High Court likewise rejected the Revenue's section 66(2) application.

Source: [SCR 847-850: assessment, surviving allegations, penalty and reference route.](#)

02 DISCUSSION BY THE HON'BLE COURT

Vaidialingam J examined the penalty orders and the Tribunal's reasons separately from the assessment result. Excise officers controlled the premises, sale bills carried permit numbers, and the Department had not checked relevant authorisations with those officers. The Tribunal also found no overall stock discrepancy in Kola Liquidum. Suspicious transactions could justify assessment additions without proving deliberate concealment. By contrast, the penalty officer simply incorporated the assessment reasons and the appellate officer speculated about nearby dry areas. Following Anwar Ali, the Court treated these section 28 proceedings as penal: the Department needed cogent material showing both taxable income and conscious concealment or deliberate inaccuracy. Assessment findings could be good evidence, but were not conclusive; merely rejecting the assessee's explanation did not establish the statutory ingredients.

Source: [SCR 851-853: evidentiary evaluation and Anwar Ali application.](#)

03 JUDICIAL DECISION

The Tribunal had made a proper judicial assessment of the material. Its findings against the Department were factual and generated no question of law requiring reference. The Supreme Court therefore upheld refusal of the section 66(2) application. It did not reopen the completed quantum assessment, and it did not hold that evidence already used in assessment was inadmissible in penalty proceedings.

Source: [SCR 852B-E and 853B-F: factual findings and no referable question.](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue appeal dismissed. Cancellation of the ₹35,000 penalty remained undisturbed. No order as to costs because the respondent did not appear. Historical penalty evidentiary approach upheld in a refusal-of-reference appeal.

Source: [SCR 853F-G: dismissal and costs.](#)

05 AKHB REVIEW POINT

Keep the evidentiary question separate from the tax addition and identify the applicable penalty version first. This old-Act judgment cannot by itself displace later statutory presumptions or the under-reporting and misreporting regimes. The Tribunal's actual findings, rather than an abstract assertion that every penalty requires fresh evidence, explain the result.

Source: [SCR 851-853: distinct penalty inquiry, evidentiary and statutory limits.](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

8-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 eight physical text and image pages, SCR846-853; headnote ends physical2 above Civil Appellate Jurisdiction; Vaidialingam judgment starts physical2 and ends physical8 dismissal without costs. No adjacent case. Physical3 prints pharmaceutical addition 77,518 in list but 77,588 in prose, retained as internal discrepancy.

Open cited source rendition

SCR 848 lists pharmaceutical addition ₹77,518 but later prose prints ₹77,588; no amount is silently substituted.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 28(1)(c), 66(1), 66(2)

The displayed 2025 version of section 271 contains Explanation 1 and excludes assessment years beginning on or after 1 April 2017. Section 270A is a distinct under-reporting and misreporting regime, with its own explanation requirements and 50%/200% rates. It does not reproduce the 1922 burden.

Section 439(8)(a) requires a satisfactory bona fide explanation and disclosure of material facts; subsections (9)–(11) prescribe under-reporting and misreporting consequences. The Finance Act 2026 version adds subsection (11)(g) and (13A), and is not identical to section 270A. No automatic Khoday outcome or burden transfer 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.

LATER TREATMENT

Source checked 2026-10-08. CIT v. K.R. Sadayappan, 10 July 1990, [1990] 3 SCR 255, physical pages 4–5 / SCR 258–259, reproduces the Tribunal's reliance on a citation printed "Khoday Ramarao & Sons, 83 ITR 369". This is quoted Tribunal reasoning, not direct Supreme Court adoption or an independently verified correction of the name. At physical pages 6–8 / SCR 260–262, the Court applied the historical 1964 Explanation's rebuttable presumption and directed a reference. It did not finally impose the penalty. This is bounded later statutory-context evidence, not a declaration that Khoday was overruled.

Comprehensive subsequent history and present-law applicability remain unverified.

All eight physical text and image pages of Sadayappan were read. The Tribunal's quoted citation is preserved as printed; comprehensive Khoday subsequent history remains unverified.

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 whole536. 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.

[Commissioner of Income-Tax, Madras v. K.R. Sadayappan](#)

All 8 physical text and image pages, SCR 255–262. The opinion is at physical pages 3–8. The Tribunal quotation at pages 4–5 prints Khoday Ramarao & Sons, 83 ITR 369. The Supreme Court's historical Explanation reasoning is at pages 6–8, with reference-only relief at page 8. Existing primary ownership retained. Exact retained source bytes checked before/after; only listed texts/images personally read. No fresh endpoint authentication or comprehensive later history. Text pages read: 1–8. Image pages read: 1–8.

[Income-tax Act, 1961: selected section 271](#)

Displayed2025 Section271(1)intro,(c),(iii),Explanation1,web65–83;1B at132;(5)–(7)at138–141;version header38–58. 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: section439](#)

As amended by Finance Act,2026 439(1)–(15),including13A,web22455–22597;footnote22613. 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: section 270A](#)

Displayed 2025 Complete 270A(1)-(12), web 63-151; footnotes 154-158; version header 38-58. 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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