

Commissioner of Income-tax (Central), New Delhi v. M/s. S. Zoraster & Company

Civil Appeal Nos. 2012 and 2013 of 1968 — Supreme Court appeal or expressly printed appeal group decided in this judgment and connected proceedings (full list below)

[1972] 1 SCR 916 | 1971-09-24

A certificate bench could not overturn the reference judgment's factual basis to manufacture an abstract substantial question of law.

1922 Act: 66(1) | 1922 Act: 66(4)

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

Scope of this decision

Certificate jurisdiction and maintainability only; no fresh tax-situs merits holding.

01 FACTS OF THE CASE

The Revenue's appeals failed because the certificates permitting them had been improperly granted. For assessment years 1942-43 and 1943-44, a Jaipur firm received Government cheques there and collected them through Bombay. After an earlier supplementary-statement direction and an unsuccessful 1960 Supreme Court challenge, the Tribunal found no evidence showing whether dispatch was by post or hand. The High Court accepted that finding and answered the tax-receipt question for the assessee. A different bench later certified appeals by assuming postal dispatch and proposing a general Evidence Act presumption question. The assessee raised a preliminary objection to maintainability.

Source: [SCR917-920: reference, earlier appeal, findings and certificate applications.](#)

02 DISCUSSION BY THE HON'BLE COURT

Vaidialingam J accepted that a certificate order must give reasons, but those reasons must arise from the existing record and the judgment sought to be appealed. The certificate bench was not sitting in appeal over the reference bench and was not deciding the reference afresh. Its jurisdiction was to consider whether a substantial question of law arose on the material and reasoning already available. The earlier remittal had specifically sought findings about dispatch and instructions to post. The Revenue still failed to prove posting at Delhi, and the reference judgment accepted that absence of proof. The certificate bench could not replace it with an inference that Government cheques must usually travel by post. A potentially important question about section 114, illustration (f), of the Evidence Act was insufficient when it did not arise on these facts. The Court also approved the refusal to certify the separate Bombay-collection argument, already covered by authority.

Source: [SCR921-925: certificate reasoning, objections and jurisdictional limits.](#)

03 JUDICIAL DECISION

The certificates were cancelled and the order granting them set aside. Without valid certificates, the two appeals were not maintainable and were dismissed. The decision settled this procedural objection; it did not newly decide the underlying territorial receipt question on a reconstructed postal-agency case.

Source: [SCR924-926: abstract question unavailable and certificates cancelled.](#)

04 OUTCOME / IN WHOSE FAVOUR

Certificates cancelled; granting order set aside; appeals dismissed as not maintainable, with costs and one hearing fee. The Revenue obtained no merits reconsideration through the defective certificates.

Source: [SCR926B-C: nonmaintainability, costs and hearing fee.](#)

05 AKHB REVIEW POINT

Frame an appellate question from established facts and the challenged reasoning. A certificate application cannot supply missing evidence or invite an advisory ruling merely because a point might matter elsewhere. Keep the 1960 supplementary-statement appeal separate from this 1971 final disposal; modern certificate provisions should be compared without turning this into a fresh cheque-situs precedent.

Source: [SCR919 earlier stage;924-926 record-bound certification.](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal Nos. 2012 and 2013 of 1968 — Supreme Court appeal or expressly printed appeal group decided in this judgment / Income-tax Reference No. 7 of 1961 — Originating High Court income-tax reference, renumbered from the earlier reference / Civil Reference Case No. 3 of 1953 — Earlier number of the same originating High Court reference, not an additional Supreme Court appeal / Supreme Court Applications Nos. 95 and 96 of 1967 — Applications to the High Court for certificates of fitness, not Supreme Court appeal numbers

SOURCE & VERIFICATION

Original reported Supreme Court judgment

11-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 11 physical text/images SCR916-926 including full headnote, SC2012/2013/1968; Delhi ITR7/1961 renamed Punjab Civil Reference3/1953 and HC Supreme Court Applications95/96/1967 are not SC merits appeals. Earlier17Aug1960 Zoraster40ITR552 challenge distinct and no docket number invented. Certificate stage cannot reverse existing finding or seek abstract question; certificates cancelled, granting order set aside; appeals dismissed not maintainable costs one hearing fee. Full read no neighboring case.

Open cited source rendition

Civil Reference 3/1953 was the earlier Punjab numbering, later renumbered 7/1961.

Supreme Court Applications 95/96/1967 were filed in the High Court for certificates; they are not additional Supreme Court merits appeals.

The earlier 17 August 1960 Zoraster decision is reported 40 ITR 552; no unprinted earlier Supreme Court docket is inferred.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 66(1), 66(4)

Whole 261, displayed 2025, provides certified Supreme Court appeals from specified High Court reference or appeal judgments, with the 1 October 1998 distinction. It is separate from a merits appeal or a power to reconstruct the record.

Whole 367 in FA 2026 text provides the comparable certificate route from High Court appeal judgments concerning section 363 orders. The express older reference branch is not reproduced; temporal savings require separate application. No fresh territorial-receipt holding follows.

The operative historical law remains the basis of the holding. Section 1(3) commences the 2025 Act on 1 April 2026, subject to contrary provision; selected 536 savings preserve earlier operations, liabilities and proceedings. Only exact stated versions/bounds were read, not all savings, amendments, rules or applicable facts. No automatic precedent carryover.

Other provisions addressed: Indian Evidence Act, 1872, 114 illustration(f); Indian Contract Act, 1872, 50 illustration(d) (certificate-bench reasoning)

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment is adopted here; comprehensive subsequent history remains unverified.

Comprehensive subsequent history and present-law applicability are not certified.

No claim that later treatment is absent. Authorities discussed inside the primary judgment are source-field content, not later-use evidence.

IDENTIFIED SOURCE LINKS

1961 section 261

displayed 2025 identity/version 198-220; complete 225-228 Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

Income-tax Act, 2025: section 367

As amended by Finance Act 2026 Complete 367, 18662-18667, physical 452. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

Income-tax Act, 2025: bounded commencement and savings

As amended by Finance Act 2026 1(1)-(3), lines 0-13; 536(1),(2) opening and (a)-(e), lines 24385-24408 including FA 2026 amendment footnote; 536(3)-(4), lines 24597-24601. Not whole 536. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

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