

S.V. Kandaskar v. V.N. Deshpande and Another

Civil Appeal No.1650 of 1970

[1972] 2 SCR 965 | 1972-01-04

Whether the Income-tax Officer must obtain leave under Companies Act, 1956 section 446 to commence or continue assessment/reassessment of a company in liquidation under the 1961 Act.

147 | 148 | 142(1) (actual document/information notices; no independent validity ruling) | 148-153 (statutory conditions recognised, not individually adjudicated) | 271 (notice warning only; no penalty imposed or decided here)

Five-judge bench | S.M. Sikri, C.J. | J.M. Shelat, J. | I.D. Dua, J. | H.R. Khanna, J. | G.K. Mitter, J.

Assessment years: 1950-51, 1951-52, 1952-53, 1953-54, 1954-55, 1955-56

Assessment jurisdiction is distinct from recovery and liquidation distribution

The actual notices were under the 1961 Act although the six AYs were 1950-51 to 1955-56. The Court dispensed with Companies Act 1956 section 446 leave for assessment/reassessment only; it did not determine tax, validate every reopening condition, impose a penalty or authorise unrestricted recovery. Liquidation-fund scrutiny is not another tax appeal, and later Menon/Harshad treatment distinguishes assessment liability from how much can be paid. The IBC/Customs application in Sundaresh reflects a later statutory setting; the old section 446 procedure and pari passu language are not certified as unchanged law. Caption/initial variants and source citation anomalies are preserved. Original PDF unchanged; comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

Colaba Land and Mills Co. Ltd. was in liquidation. The Bombay High Court had appointed the Official Liquidator provisionally on 1 May 1959 and ordered winding up on 7 October 1959. On 23 August 1966 the Income-tax Officer issued six notices expressly under section 148 of the Income-tax Act, 1961 to reopen AYs 1950-51 to 1955-56. Further notices under section 142(1), served on 31 December 1966, sought accounts, documents and information and warned of ex parte assessment and possible section 271 penalty. The old assessment years must therefore be separated from the actual newer-Act notice jurisdiction being challenged (physical page 2/SCR 966 A-D).

After unsuccessful discussions with the Inspecting Assistant Commissioner, the Official Liquidator asked the winding-up court to restrain the proceedings for want of leave under Companies Act, 1956 section 446(1). Vimadlal J. granted an injunction on 28 September 1967. On the Officer's and Union of India's appeal, the Division Bench reversed it. The reported appellate judgment was dated 31 January 1970 in Appeal No.94 of 1967. The liquidator's certified Supreme Court appeal raised the single question whether leave was necessary to reassess escaped income for past years (physical pages 1-3/SCR 965 G-H, 966 E-967 C).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

Section 446 was read as a whole against the Companies Act winding-up scheme and its legislative history. Its consolidation of suits and claims in the winding-up court was designed to expedite administration of company assets; it did not give that court every specialist jurisdiction. The Court set out the section, including its appellate exception, and the related scheme. The 1913 Companies Act section 171 precedents were historical interpretive material, not the governing tax-assessment provision in the present dispute (physical pages 3-6/SCR 967 D-970 C).

The Court distinguished proceedings to determine tax from proceedings to recover it. Shiromani Sugar Mills concerned recovery under 1922 section 46(2), and M.K. Ranganathan concerned secured-creditor realisation; neither decided that tax assessment itself required company-court leave. India Fisheries concerned an attempted set-off under 1922 section 49E against a proved liquidation debt and the effect on equal distribution. Its special-versus-general observation in that context did not make Companies Act section 446 override 1961 section 148 in computing tax (physical pages 6-10 and 13/SCR 970-974 C, 977 C-H).

Nor did treating the Income-tax Officer as a court for Criminal Procedure Code section 195(1)(b) in Balwant Singh make him a court for Companies Act section 446. The sales-tax repeal case Abdul Aziz Ansari likewise did not resolve the meaning required here. The Court examined Seth Spinning Mills and Mysore Spun Silk Mills, accepting the distinction concerning collection while rejecting the proposition that leave was also necessary for quantification. Its closing disapproval is expressly confined to the rule requiring leave to commence or continue assessment or reassessment (physical pages 10-13 and 15/SCR 974 C-977 C, 979 D-E).

The operative tax reasoning addresses Chapter XIV of the 1961 Act: section 147 empowers the Officer, subject to sections 148-153, to assess or reassess escaped income. The income-tax statute is a complete code particularly for that task, with its own appeal, reference and revision hierarchy. The proceedings contemplated by section 446 must be ones the winding-up court can appropriately deal with. That court cannot take over an Officer's assessment functions, and the Officer does not perform the functions of a court contemplated by section 446(2) when assessing. A power to transfer and itself determine tax would produce consequences the legislature could not have intended (physical page 14 through page 15 opening/SCR 978 A-979 A).

The Court rejected leave as a condition for starting or continuing assessment/reassessment. It separately preserved the liquidation court's scrutiny of the Revenue's claim after tax had been determined and payment demanded, and its role in deciding how far that amount was a lawful liability on the company's liquidation funds while protecting other creditors. This does not make that court another income-tax appellate forum; the later treatment below clarifies the distinction between assessment and payment from administered funds (physical page 15/SCR 979 A-D).

02 DISCUSSION BY THE HON'BLE COURT

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Official Liquidator's Civil Appeal No.1650 of 1970 was dismissed with costs. The Division Bench's order setting aside the injunction therefore remained in force. The Income-tax Officer was not required to obtain winding-up court leave to commence or continue the assessment/reassessment proceedings. No tax amount, escaped-income merits, limitation objection under sections 147-153, penalty liability or final distribution among creditors was adjudicated (physical page 15/SCR 979 D-F, read with the sole question at physical page 3/SCR 967 C).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Income-tax Officer and Union of India on the leave/jurisdiction question

Official Liquidator's appeal dismissed with costs; appellate removal of the injunction stands

Final reasoned assessment-jurisdiction ruling, not determination of taxable income or recovery entitlement

No computation of tax, adjudication of reopening conditions, penalty decision, or general priority/distribution decree; leave-free assessment does not equal leave-free recovery.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Identify the act proposed before deciding which forum controls it: quantifying tax, challenging that quantification through tax remedies, proving a claim and obtaining payment from liquidation assets are different steps. A no-leave rule for assessment does not authorise uncontrolled recovery or establish Revenue priority. Nor does the date of an assessment year determine the governing notice provision: here the Court expressly dealt with 1961 notices for six pre-1961 years.

In A.K. Menon (18 July 1995), a two-judge Supreme Court order read Kandaskar's scrutiny passage in context: it concerned how much of the determined tax could be paid while safeguarding other creditors, not a power to sit in appeal over tax assessment. The order disallowed the Special Court's proposed reassessment of whether tax claims were bona fide, reasonable, justified or enforceable. Its reporter labels Kandaskar distinguished; the judicial explanation is more useful than that label (physical pages 4-5/SCR 184-185).

That later statement must itself be qualified. Harshad Shantilal Mehta (13 May 1998), a three-judge decision, agreed that the Special Court cannot reopen assessments but qualified Menon's payment-in-full observations. For the specific Special Court Act, 1992 funds and statutory period, serious miscarriage of justice, fraud, collusion or disproportion could justify scaling down the amount paid out, on strong reasons, while the underlying balance liability survived. This is a limitation on an overbroad payment rule, not an overruling of Kandaskar's assessment jurisdiction holding (physical pages 21-23/SCR 409 D-411 D).

The corporate-insolvency framework also changed. Sundaresh Bhatt (26 August 2022) expressly quoted Kandaskar and applied the quantification/enforcement distinction in a Customs Act and Insolvency and Bankruptcy Code, 2016 dispute. It considered IBC sections 14, 33(5), 53 and 238: during moratorium Customs could assess the amount, but could not recover by sale/confiscation outside the IBC process and had to submit claims within that process. The appeal was allowed and the NCLAT order set aside. This supplies a bounded later statutory setting, not a conclusion that the old Companies Act section 446 procedure or *pari passu* description operates unchanged today (paragraphs 37-47 and 53-55, physical pages 19-26/SCR 659-666).

Practical research sequence: establish the applicable tax-notice version, the insolvency regime and procedural stage, then test the particular action against its moratorium, claims and distribution provisions. This note does not reconstruct all amendments, savings or the present Companies Act/IBC position, and makes no Income-tax Act, 2025 mapping.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, date, bench and lower appellate identity

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 965 heading and G-H

2.

Topic: Author, verified 7 October date, six actual 1961 notices and procedural history

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 966 A-967 C

3.

Topic: Section 446 text and historical company-law scheme

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5; 6

Paragraphs: SCR 967 D-970 C

4.

Topic: Recovery, security and set-off precedents distinguished

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8; 9; 10; 13

Paragraphs: SCR 970-974 C; 977 C-H

5.

Topic: Context-specific meaning of court; High Court views examined

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12; 13

Paragraphs: SCR 974 C-977 C

6.

Topic: Actual 1961 Chapter XIV jurisdiction and no transfer to winding-up court

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: SCR 978 A-979 A

7.

Topic: Post-assessment liquidation scrutiny; narrow disapproval; exact dismissal and costs

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: SCR 979 A-F

8.

Topic: Later contextual reading of scrutiny passage and limited appeal relief

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 184 A-185 G

Source role: later judicial treatment

9.

Topic: Later qualification: no reopening of assessment, but serious-case scaling down of payment

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23

Paragraphs: SCR 409 D-411 D

Source role: later judicial treatment

10.

Topic: IBC statutory setting, explicit Kandaskar reliance, quantification/recovery boundary and relief

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21; 22; 23; 24; 25; 26

Paragraphs: Paragraphs 37-47 and 53-55; SCR 659-666

Source role: later judicial treatment and statutory context

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Actual 1961 notices, and express construction of that Act's exclusive assessment/reassessment machinery, independently qualify this as a 1961 law-declaring jurisdiction judgment. It is not retained merely for a Companies Act discussion or an analogy to old-Act cases. The numerous historical comparisons remain labelled as such.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

I.D. Dua, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 assessment/reassessment jurisdiction, read with Companies Act, 1956 section 446

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Companies Act, 1956, section 446(1)-(4) and related winding-up scheme including sections 433, 439, 441, 442, 444, 445, 448 and 609; Indian Companies Act, 1913, sections 171, 211, 228, 229 and 232 (historical scheme and cited precedents); Indian Income-tax Act, 1922, sections 46(2) and 49E (cited recovery/set-off precedents only); Constitution of India, Article 133(1)(c) (certified appeal)

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 15 PDF pages; SHA-256
e6431f964704cad66dfb88c0718fac361045502ca15a4e374a44139b04ad6ba7. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

Caption, date and SCR citation verified against the scan. Later reports spell the parties Kondaskar and V.M. Deshpande. Catalogue neutral label 1972INSC2 is not printed or independently authenticated by this source.

The scan caption is S.V. Kandaskar v. V.N. Deshpande; later Supreme Court sources print S.V. Kondaskar v. V.M. Deshpande. The source title is preserved; the variants are identification aids, not additional judgments.; The winding-up date is visibly 7 October 1959 at SCR 966; OCR can misread the punctuation/scan mark as 17. This is an image-resolved extraction error, not a printed alternative date.; Six actual notices are expressly under 1961 section 148 despite AYs 1950-51 to 1955-56. Historical 1922 sections in cited cases must not replace the actual governing notice statute.; At SCR 972 the text describes the Federal Court material as Shakuntla's case, although SCR 970 identifies the Federal Court case as Shiromani Sugar Mills and Shakuntla as the Lahore decision discussed there. Preserve this attribution anomaly; do not silently repair the original.; Mysore Spun Silk Mills is footnoted as 68 ITR 295 at SCR 974 but 68 ITR 695 at SCR 979. The later Sundaresh quotation uses 295. The original inconsistent footnote remains unchanged.; Quoted earlier headnotes and counsel submissions are not separate holdings in the present appeal. References to penalty in the notices and Seth Spinning Mills do not decide the present company's penalty liability.; The final scrutiny passage concerns liquidation funds and must be read with the assessment-jurisdiction reasoning and the later Menon/Harshad explanations; no power to reopen assessments in a parallel forum is inferred.; Later sources are bounded historical checks. Sundaresh concerns Customs/IBC, not an actual income-tax assessment. Neither all present insolvency amendments nor all transition/savings provisions have been verified.

The six old assessment years are expressly subject to actual section 148 notices under the Income-tax Act, 1961 dated 23 August 1966. The appeal decides the company-court-leave objection, not the merits or statutory timeliness of each reopening.

STATUTORY SCOPE

No Income-tax Act, 2025 crosswalk. Neither section numbers nor the historical Companies Act procedure establish an automatic modern equivalent.

LATER TREATMENT

Source checked 2026-10-05. not_verified comprehensively. Targeted adverse/distinguishing searches and retained-source checks on 5 October 2026 yielded the three later Supreme Court sources registered here. Menon explains the scrutiny passage; Harshad qualifies payment in full; Sundaresh applies the distinction in the IBC/Customs setting. No comprehensive citator or absence-of-adverse-treatment certificate.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 15](#)

SHA-256: e6431f964704cad66dfb88c0718fac361045502ca15a4e374a44139b04ad6ba7

[later reported judgment - PDF pages: 5](#)

SHA-256: bb15963678dd1bb582cf9e288854b04c5b57b3491c742202ae505dec41e914f5

[later reported judgment bounded - PDF pages: 25](#)

SHA-256: 6da6c67ee9b5b2ff442c21101cd69802b828ab5295a532b435db4179810a9393

[later reported judgment bounded - PDF pages: 26](#)

SHA-256: 686011a860ce190f15b6025ddb61879bd170118c09b91e6edc7aed509f742e36

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