

Commissioner of Income Tax, West Bengal v. M/s. Abdul Rahim Osman & Co. (India) Private Limited

Civil Appeal Nos. 1378 and 1379 of 1969 — Supreme Court appeal or expressly printed appeal group decided in this judgment and connected proceedings (full list below)

[1973] 2 SCR 372 | 1972-09-19

Dividends actually distributed before the section 23A order reduced the undistributed balance even though declared after the twelve-month period triggering jurisdiction.

1922 Act: 23A(1) (as recast by Finance Act, 1955) | 1922 Act: 23 | 1922 Act: 66(1)

3 Judges | K. S. Hegde | P. Jaganmohan Reddy | H. R. Khanna

01 FACTS OF THE CASE

The private company's accounting years ended on 30 June 1957 and 30 June 1958, relevant to assessment years 1958-59 and 1959-60. It declared dividends of Rs. 15,000 and Rs. 90,000 at general meetings on 17 December 1959 and 26 May 1960. Both distributions were outside the following twelve months but preceded the ITO's order of 31 October 1961. The ITO and AAC nevertheless included them in the balance subjected to additional super-tax. The Tribunal directed that they be taken into account, and the Calcutta High Court agreed on reference under section 66(1) of the Indian Income-tax Act, 1922.

Source: [SCR 373E-374F](#)

02 DISCUSSION BY THE HON'BLE COURT

Jaganmohan Reddy J examined section 23A(1) as recast in 1955. Its opening test concerned insufficient distribution within twelve months; its concluding computation reduced income by specified taxes, qualifying reserves and dividends actually distributed. The provision targeted accumulation of company profits to avoid shareholder super-tax. Failure to distribute within the stated period could confer jurisdiction, but did not justify counting dividends already paid as still undistributed when the order was made. The Court linked that reading to commercial profits and the unintended duplication of taxation otherwise possible. The closing reasoning uses broad language about assessment under section 23; it must be read in the context of the referred question concerning the additional-super-tax balance, rather than as abolishing ordinary company assessment.

Source: [SCR 374F-376D](#)

03 JUDICIAL DECISION

The High Court correctly answered that the ITO should consider the dividends declared and paid before his order, notwithstanding their distribution after the twelve-month period. The Tribunal's reduction of the relevant undistributed balance therefore stood. The decision distinguishes the conditions activating section 23A from the amount on which liability is calculated; it does not treat the statutory distribution deadline as nonexistent.

Source: [SCR 373F-H, 374D-F and 376D-E](#)

04 OUTCOME / IN WHOSE FAVOUR

The Revenue's appeals were dismissed with costs; the printed final formula uses the singular "appeal". The Rs. 15,000 and Rs. 90,000 distributions had to be allowed for in computing the undistributed balance.

Source: [SCR 376D-E](#)

05 AKHB REVIEW POINT

Separate a statutory trigger from the charging base and identify the relevant date for each. In a historical section 23A dispute, prove actual declaration and payment before the order, not merely a proposed distribution. Avoid presenting this as a current dividend-tax rule or importing its twelve-month test into later legislation. The judgment's certificate discussion also records that no objection was pursued. The later 1961 undistributed-profit chapter was omitted from 1 April 1988; no 2025 equivalent levy is asserted.

Source: [SCR 373E-376E](#); [editorial trigger/computation and historical limits](#); [All four pages newly read, text and original rendered images: title and contents at physical 2/6; Chapter XI and sections 104-109 \(including 107A\) omission entries and annotations at physical 585-586, printed 1.544-1.545. Adjacent sections not adopted. Department of Revenue-hosted Taxmann Finance Act 2011 compilation; not Gazette original or current consolidation.](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal Nos. 1378 and 1379 of 1969 — Supreme Court appeal or expressly printed appeal group decided in this judgment / Income-tax Reference No. 17 of 1965 — Originating High Court appeal/reference docket; not an additional Supreme Court appeal

SOURCE & VERIFICATION

Original reported Supreme Court judgment

5-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.

Open cited source rendition

The body and final disposal use singular "appeal" despite the two printed appeal numbers; both docket numbers are retained.

The final paragraph's broad references to regular assessment are reported in context; the actual referred question and adopted answer concern the section 23A undistributed-balance computation.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 23A(1) (as recast by Finance Act, 1955), 23, 66(1)

The personally read 2011 compilation records Chapter XI (additional tax on undistributed profits) and sections 104-109 omitted by Finance Act 1987 from 1 April 1988. Section 104's heading concerns undistributed company income. This verifies historical regime/omission, not an exact full-text 23A→104 identity.

No equivalent 2025 undistributed-profit levy is asserted. The historical omission evidence does not establish a present counterpart; the 1922 distribution deadline must not be imported into modern dividend taxation.

Legacy 1922 holding. Exact compared versions and bounded read scopes are recorded in sources; no automatic present-law carryover or exhaustive tax-year/repeal/savings determination.

LATER TREATMENT

Source checked 2026-10-07. No specific later judicial use has been adopted for this note in this bounded review. This is a verification limit, not an assertion that none exists.

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

IDENTIFIED SOURCE LINKS[Income-tax Act, 1961: historical omission of Chapter XI and sections 104-109](#)

Department of Revenue-hosted Taxmann Finance Act 2011 compilation; historical omission evidence only All four pages newly read, text and original rendered images: title and contents at physical 2/6; Chapter XI and sections 104-109 (including 107A) omission entries and annotations at physical 585-586, printed 1.544-1.545. Adjacent sections not adopted. Department of Revenue-hosted Taxmann Finance Act 2011 compilation; not Gazette original or current consolidation. Exact retained PDF checked before/after. Only four specified text/image pages personally read; no fresh download, Gazette-original or current-consolidation claim. Text pages read: 2, 6, 585-586. Image pages read: 2, 6, 585-586.

AI DISCLOSURE

AI-assisted research. The AKHB Review Point is editorial analysis, not part of the Court's judgment.

PROFESSIONAL DISCLAIMER

AI-assisted legal research note for general information and professional research. It is not legal or tax advice. Verify the original judgment, applicable statutory version and subsequent judicial treatment before relying on it. The AKHB Review Point is editorial analysis, not part of the Court's judgment.