

MOOSA S. MADHA & AZAM S. MADHA v. COMMISSIONER OF INCOME-TAX, WEST BENGAL, CALCUTTA

Civil Appeal No. 491 of 1970; Originating High Court proceedings: Income-tax Reference No. 72 of 1966

[1973] 3 SCR 497 | 1973-02-06

Once the historical residence thresholds were admitted, the assessee failed to prove that his visit was casual or occasional. He also failed to establish that the Burma remittance was capital; the unpreserved photostat complaint could not reopen the reference record.

3-judge bench | K. S. Hegde, J. | P. Jaganmohan Reddy, J. | H. R. Khanna, J.

Historical residence and evidence limits

The old occasional-or-casual-visit test is not a substitute for later residence rules. The photostat discussion is tied to missing originals and an unpreserved reference issue.

Operative context: Indian Income-tax Act, 1922; 4A(a)(iii), 34(1)(a), 66(1).

01 FACTS OF THE CASE

S. C. Madha, since deceased, had a soap and umbrella business in Burma with his sons. After wartime residence in India, he returned to Burma in February 1946 but spent two months in India during 1947. The partnership's bankers remitted Rs. 5 lakh in 1946 and a further Rs. 2 lakh on 26 October 1947 to his Calcutta account.

Following voluntary disclosures and reassessment proceedings, the Tribunal cancelled the 1947-48 assessment but upheld 1948-49. It found him resident but not ordinarily resident and treated the 1947 remittance as accrued business profits. The Calcutta High Court answered both referred questions for Revenue.

Source: [SCR 498 C-H;499 A-H](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 4A(a)(iii) required the specified 365-day presence during the preceding four years and some presence in the relevant year, otherwise than on an occasional or casual visit. Revenue initially bore the burden of those presence conditions. Both were admitted here, leaving the assessee to explain the character of his two-month visit.

His affidavit gave no reason for the visit and did not even claim it was casual or occasional. Absence of a business in India did not supply the missing proof. The Court therefore found no basis to disturb the Tribunal's factual conclusion.

The capital-remittance claim likewise lacked the books requested on several occasions. Counsel relied on certified photostats said to have been produced before the Tribunal, but its order showed no reliance on them. Their alleged disregard had not been raised in the section 66(1) application or framed as a referred question. The High Court properly stayed within that record. The Court's adverse observation about photostats belongs to these evidentiary and procedural circumstances, not a universal rule against copies.

Source: [SCR 500 A-H;501 A-H;502 A-D](#)

03 JUDICIAL DECISION

The Supreme Court upheld both answers and dismissed the appeal with costs. The decision concerns 1948-49; the Tribunal's cancellation of the earlier year's assessment was not reversed.

Source: [SCR 502 C-D](#)

04 OUTCOME / IN WHOSE FAVOUR

Appeal dismissed; both reference answers upheld. Result: Revenue. Costs: With costs. Scope: Residence finding and failure to prove capital remittance sustained. Limit: Historical residence test and the particular reference/evidence record.

Source: [SCR 502 D](#)

05 AKHB REVIEW POINT

Preserve a dated travel record and evidence explaining each material visit under the actual statutory test. Trace remittances with accounts and supporting records at the fact-finding stage. If evidence was ignored, raise that precise error in the appropriate appeal or reference; a later argument cannot silently expand a settled statement of case.

Source: [SCR 500 F-H;501 C-H;502 A-C](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

6-page retained public-mirror SCR report. The complete report was read as text and page images. Fresh remote authentication as a signed original is not claimed.

Open cited source rendition

Caption names Moosa and Azam; the judicial facts concern deceased S.C.Madha. The source's 1946 Rs. 5 lakh transfer and 1947 Rs. 2 lakh transfer are distinct. The originating High Court judgment date is visually 3 June 1969, despite OCR distortion.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 4A(a)(iii), 34(1)(a), 66(1).

The official section 6 webpage labelled 2024(No.2) uses day-count tests with citizen/visitor exceptions, 120-day and deemed-residence rules, and separate not-ordinarily-resident conditions. The old occasional/casual-visit wording must not replace those rules; current 1961 consolidation is not certified.

Section 6(2) uses 182 days or 60 days plus 365 in the preceding four years, subject to sections 6(3)–(8), including citizen/visitor, 120-day and deemed-residence qualifications. Section 6(13) separately governs not-ordinary residence. Actual year and facts remain essential.

The 2025 Act commenced 1 April 2026. Section 536 preserves 1961 proceedings/procedure for tax years beginning before that date and pending proceedings; compare the actually applicable law.

Related-section tags are research cross-references, not provisions decided in this judgment or verified mappings beyond the specific comparisons and source bounds below.

No automatic precedent carry-over or verified case-specific 2025 applicability is claimed.

LATER TREATMENT

Source checked 2026-10-07. No separate later judicial use is verified in this bounded review. No inference of absence of later treatment is made.

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

IDENTIFIED SOURCE LINKS

[Income-tax Act 1961 section 6, official webpage labelled 2024\(No.2\)](#)

Section 6(1),(1A),(2)–(6), explanations and version label; HTML lines 38–99. Text-only selected version; no current 1961 FA 2026 certificate.

[Income-tax Act, 2025, as amended by Finance Act 2026](#)

Section 6; physical 27–29, lines 1083–1151. Selected web-extracted text; no raw-PDF/image verification or all-amendments certificate.

[Statutory comparison pinpoint](#)

Section 6; physical 27–29, lines 1083–1151.

[Statutory comparison pinpoint](#)

Section 1(3), physical 1; section 536(2)(c),(e), physical 584–585, extracted lines 24385–24408.

AI DISCLOSURE

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

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