

Narendrakumar J. Modi v. Commissioner of Income Tax, Gujarat II, Ahmedabad

Civil Appeal No.156 of 1971

[1977] 1 SCR 112 | 1976-08-04

Whether the attachment for the family's tax dues could be defeated by the asserted invalidity of the partition orders, the junior member's authority, notices allegedly addressed to a deceased person, or the appellant's claimed non-participation; the independently decided 1961 notice issue concerns the family's continuing assumed business name.

142 and 143 (expressly stated notice provisions for AY 1962–63 onward; family-name/dead-person objection decided)

Three-judge bench | H.R. Khanna, J. | V.R. Krishna Iyer, J. | N.L. Untwalia, J.

Assessment years: 1955-56, 1956-57, 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66

Mixed Acts and a fact-specific family-name notice ruling

Decided on 4 August 1976, although reported in 1977. The partition issue is under 1922 section 25A; only the AY 1962–63 onward notices are expressly placed under 1961 sections 142/143. The Court found that notices addressed the continuing family under its assumed business name, not the deceased individual. This is not a rule curing actual dead-person notices, a section 171 holding or a general collateral-challenge doctrine. The appeal failed with costs to the Commissioner. Current law, comprehensive later treatment and 2025 mapping are not verified.

01 FACTS OF THE CASE

The appellant, a grandson of Bapalal Purshottamdas Modi, challenged tax proceedings against the family and recovery from its property. The family owned immovable property and carried on businesses including money-lending. According to the appellant, Bapalal's 1948 power of attorney concerned separate property; Bapalal relinquished his joint-family interest on 22 October 1954 for Rs.75,000, and the surviving sons and a grandson executed a partition memorandum on 24 October 1954 (physical page 2/SCR 113 E-H).

During the family's AY 1955-56 assessment, partition was claimed under section 25A of the 1922 Act. All members received inquiry notices, and the appellant gave evidence. The Officer rejected the claim on 28 January 1960. A later civil partition suit produced a preliminary decree on 30 June 1965, which was relied on before the Appellate Assistant Commissioner. That appeal was dismissed on 30 September 1965, and the Tribunal dismissed the further appeal on 28 March 1969. No reference was sought against the Tribunal's partition decision (physical pages 2-3/SCR 113 H-114 B; physical page 5/SCR 116 B-D).

Assessments continued through AY 1965-66, at times describing the family as an association of persons or unregistered partnership according to the returns. Earlier notices were under 1922 sections 22 and 23; the judgment expressly identifies notices for AY 1962-63 onward as issued and served under sections 142 and 143 of the 1961 Act. Demands were only partly paid. On 12 May 1970 the Officer attached Rs.56,294.43 in the savings account operated by the civil-suit receiver. The appellant's writ sought to invalidate the partition refusal, the AY 1955-56 to 1965-66 assessments, penalties and recovery/attachment steps (physical page 3/SCR 114 B-H).

The Gujarat High Court dismissed the writ in limine on 19 October 1970 and granted an Article 133(1)(b) certificate. In the Supreme Court counsel was required to confine the appeal to one matter and selected the bank-account attachment. He then argued that its underlying orders were void and could be attacked collaterally. That was counsel's proposed route, not a general collateral-challenge rule adopted by the Court (physical page 2/SCR 113 A-D; physical page 4/SCR 115 D-H).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court rejected each asserted defect. On partition, it examined the instruments and the section 25A orders and found no legal infirmity or defect rendering them void. The appellant had admitted notice of the inquiry and had been examined. Under 1922 section 25A(3), a family assessed as undivided continued to be deemed undivided for that Act unless partition had been recognised by the prescribed order. The later preliminary civil decree did not bind the tax authorities in their statutory determination, and no reference had been taken from the Tribunal's order. That reasoning is expressly about the 1922 partition provision; the judgment does not construe 1961 section 171 (physical page 5/SCR 116 A-D).

The assessment orders showed Gulabchand acting as karta even during Bapalal's lifetime after Bapalal retired to Brindaban. Nobody then disputed his authority; the eldest brother was elderly and another elder brother had died. On those circumstances, the Court regarded him as acting with the other members' consent and held that a junior member could manage the family where the senior member gave up management. The quoted Mulla passage supported that Hindu-law proposition; it did not eliminate the consent foundation (physical page 5/SCR 116 D-F).

The asserted dead-person notice defect was independently rejected on the notices' actual addressee and context. The notices were in the name of the family carrying on business under the assumed name Bapalal Purshottamdas Modi; they were neither issued to nor served on the deceased Bapalal. The managing member responded by filing returns, and no such objection had been taken before the tax authorities. Read with the express identification of the later notices under 1961 sections 142 and 143, this is a reasoned notice-validity determination within the mixed-year proceedings. It does not hold that participation or silence cures a notice actually issued to a dead individual (physical page 3/SCR 114 C-D; physical page 5/SCR 116 G-H).

Finally, the appellant was bound by the assessments of his family's income, the family having continued joint in the eye of the law. His share of property received from that family, or its income, was liable for the dues in question. This was the Court's answer on this family and these assessments, not an unrestricted rule charging every personal asset of any relative or a general validation of all recovery procedures (physical pages 5-6/SCR 116 H-117 A).

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

03 JUDICIAL DECISION

The Court held the writ misconceived and the grounds untenable. It dismissed Civil Appeal No.156 of 1971 with costs to respondent No.1, the Commissioner. The challenge to the bank-account attachment and its asserted invalid underlying assessments therefore failed. There was no remand, fresh partition inquiry or setting aside of the attachment (physical page 6/SCR 117 A-B).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Assessee/member appeal dismissed with costs to respondent No.1; attachment challenge failed

Reasoned rejection of the alleged defects in the mixed 1922/1961 proceedings, including the family-name notice objection

The notices were found to address the continuing family under its assumed business name, not the deceased individual. No general cure for dead-person notices, broad collateral-challenge rule, section 171 construction or blanket charge over unrelated personal assets.

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

05 AKHB REVIEW POINT

Identify the actual taxable addressee before treating a name as proof that a notice went to a deceased person. Here, the continuing family's business name, the managing member's returns and the assessment record mattered. Keep that factual foundation separate from a notice genuinely addressed to a deceased individual.

For a multi-year recovery challenge, map each order to its governing Act. The Court expressly placed post-1961 notices under sections 142 and 143, while its partition analysis remained under 1922 section 25A. Neither the 1977 report year nor the outcome permits relabelling that partition analysis as a holding under section 171. The decision does not supply a general licence or prohibition for collateral challenges to tax assessments.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Actual date and three-judge bench

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 112 heading

Source role: reported metadata

2.

Topic: Docket, High Court date, certificate route and author

Source url: [Open cited source](#)

Pdf pages: 2

Paragraphs: SCR 113 A-D

Source role: reported metadata and judicial text

3.

Topic: Family history, partition proceedings and decree chronology

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 113 E–114 B

Source role: judicial text

4.

Topic: AY range and express allocation of post-1961 notices to 1961 Act

Source url: [Open cited source](#)

Pdf pages: 3

Paragraphs: SCR 114 B–D

Source role: judicial text

5.

Topic: Recovery, account attachment, reliefs and counsel's collateral attack

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 114 D–115 H

Source role: judicial text

6.

Topic: 1922 partition decision and consensual junior-member management

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: SCR 116 A–F

Source role: judicial text

7.

Topic: Independent family-name notice reasoning

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: SCR 116 G–H

Source role: judicial text

8.

Topic: Liability confined to family property/income and actual dismissal/costs

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 116 H–117 B

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

N.L. Untwalia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (sections 142 and 143 notices for AY 1962–63 onward within the decided family-name notice challenge); Indian Income-tax Act, 1922 (section 25A partition and earlier sections 22/23 notices)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: section 25A, especially subsection (3), and sections 22 and 23 for earlier notices; Constitution of India: Article 133(1)(b), as it stood before the Thirtieth Amendment, for the certified appeal; Hindu-law management principle, with Mulla's Hindu Law, fourteenth edition, page 296 cited

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 6 PDF pages; SHA-256

aa7f048e6b23bbccae26d9547137d3df000c0dfa7e713c2312c87bc5ed0e12b2. Original bytes preserved.

Judicial body begins physical page 2/SCR 113 B (Untwalia, J.) and ends physical page 6/SCR 117 B with dismissal and costs to respondent No.1. Page 1 is headnote; upper page 2 is appellate metadata. No adjacent judgment.

Open cited source rendition

The report is in [1977] 1 SCR, but the judgment date on its first page is 4 August 1976.; The body expressly identifies 1961 sections 142/143 for AY 1962–63 onward; earlier notices and the partition adjudication are under the 1922 Act. Section 171 is not discussed.; The Court rejected the dead-person premise because notices addressed the family's assumed business name. Returns and absence of earlier objection are part of that reasoning, not an independent curative rule for a notice to a deceased person.; Collateral attack is counsel's submission at SCR 115 E; the Court disposed of the asserted defects on their merits without declaring a general collateral-challenge doctrine.; The source varies Bapalal's middle name in isolated passages; this note follows the predominant Purshottamdas form without treating the variation as a different person. The first-page headnote is not used to replace the body's chronology or statutory allocation.

The writ attacked assessments for AYs 1955–56 through 1965–66. The initial section 25A claim arose in AY 1955–56. The judicial body expressly states that notices for AY 1962–63 onward were issued and served under 1961 sections 142 and 143; it does not allocate the occasional AOP/unregistered-firm descriptions or particular demands to individual years.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no current-law carryover certification. Verify the applicable statutory version separately.

LATER TREATMENT

Source checked 2026-10-05. not_verified. A bounded corpus name search located the assigned report but no separately verified later treatment of the family-name notice holding. That negative discovery result is not a complete citation check; no current-law validation or 2025 mapping.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 6

SHA-256: aa7f048e6b23bbccae26d9547137d3df000c0dfa7e713c2312c87bc5ed0e12b2

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