

Commissioner of Income Tax, Kerala, Ernakulam v. V. Damodaran, Trivandrum

Civil Appeal No. 2099 of 1972

[1980] 1 SCR 944 | 1979-10-15

Whether the historical 1922 dividend provision included current profits, and whether an assessee partly unsuccessful before the Tribunal could obtain a reference on an independent adverse issue without filing his own section 256 application.

256(1) and reference-on-refusal procedure (independent jurisdiction holding) | 254 (Tribunal order from which a question arises) | 261 (certificate appeal route) | 147 (reopening mentioned in procedural history) | 2(22), Explanation 2 (Revenue comparison rejected as a basis for changing the 1922 provision)

Two-judge bench | N.L. Untwalia, J. | R.S. Pathak, J.

Assessment years: 1959-60

Mixed statutes and a limited reference-standing rule

This case contains an independent jurisdiction holding under section 256 of the 1961 Act. The current-profits result concerns the 1922 Act and must not be transplanted to section 2(22). A wholly successful non-applicant could raise rejected grounds supporting its existing result; an aggrieved party seeking independent further relief needed its own application. The second question was voidly referred and its merits were not decided. The reference machinery is historical; comprehensive later treatment, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

For AY 1959-60, the assessee, managing director of R.K.V. Motors & Timber (P) Ltd., was originally assessed on Rs.43,407. The Officer reopened under section 147 of the 1961 Act after learning of drawings from the company and treated Rs.25,107 as dividend under section 2(6A)(e) of the 1922 Act, including current-year profits. The assessee contended that accumulated profits were only Rs.1,050 after deducting provisions of Rs.11,000 for tax and Rs.6,900 for dividend from the Rs.18,950 balance. The Tribunal excluded current profits but refused those two deductions, fixing accumulated profits at Rs.18,950 (physical pages 2-3/SCR 945-946).

Only the Commissioner applied for a reference. At his instance the Tribunal referred whether accumulated profits included current profits for section 2(6A). At the assessee's request it also referred whether Rs.18,950 constituted accumulated profits, although the assessee had filed no reference application. The second issue concerned the tax and dividend provisions and a distinct further reduction. The Kerala High Court answered both issues for the assessee on 18 January 1972 in I.T.R. No.88/1969. Revenue appealed by certificate under section 261. The assessee was unrepresented in the Supreme Court (physical pages 2-4, 6).

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

02 DISCUSSION BY THE HON'BLE COURT

On dividend merits, the Court agreed with the settled interpretation of the 1922 provision that current profits, earned in the year in which the loans were made, were outside accumulated profits. It followed the reasoning of M.V. Murugappan and related authorities. The Revenue relied on the Law Commission report and Explanation 2 to section 2(22) of the 1961 Act as showing that current profits had always been intended to be included. The Court rejected that attempt to alter the meaning of the governing 1922 text (physical pages 4–6). This branch is historical 1922 law, not a holding that current profits are excluded under the different 1961 definition.

The reference-competence objection had been raised before the Tribunal but apparently not before the High Court. Because it concerned the High Court's jurisdiction over the second question, the Supreme Court allowed Revenue to raise it there. Section 256 contemplated an application, within its prescribed limitation period, by the party seeking the reference; the rule 48 form required the questions to be identified. Where the Tribunal refused a reference, the right to approach the High Court likewise belonged to the refused applicant (physical pages 6–7).

The Court drew two categories. Where the Tribunal granted only part of the relief claimed, or decided distinct items partly for each side, each party seeking to disturb an adverse result had to make its own reference application. One could not use the other's application to obtain separate relief. But a party wholly successful in the result was not aggrieved merely because the Tribunal rejected an alternative legal ground. If the aggrieved opponent obtained a reference, that successful non-applicant could seek reference of questions arising from its rejected submissions to support the favourable result. The Court rejected both an absolute bar on every non-applicant question and an unlimited entitlement to add unrelated issues (physical pages 7–9).

Here, deduction of the Rs.11,000 tax provision and Rs.6,900 dividend provision was independent of whether current profits were included. The answers could yield separate and distinct relief and neither depended on the other. The assessee therefore needed his own application. The second reference was incompetent and void; its merits did not require examination (physical page 9).

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

03 JUDICIAL DECISION

The appeal was allowed only to the extent of setting aside the High Court's opinion on the second question, whose reference was void. The appeal was dismissed as to the first question, so the answer excluding current profits under the 1922 provision stood. The Court expressly made no order as to costs and did not decide whether the tax and dividend provisions could reduce accumulated profits (physical page 9/SCR 952 D–G).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed: assessee on the first, historical dividend question; Revenue on jurisdiction over the second reference question

Revenue appeal partly allowed; High Court opinion on second question set aside; appeal dismissed on first question; no order as to costs

First question decided under the 1922 Act; second reference held void without deciding its merits; independent section 256 procedural rule declared

Successful-party support is confined to rejected grounds supporting the favourable Tribunal result; it is not a right to obtain unrelated relief on an opponent's reference application.

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

05 AKHB REVIEW POINT

Identify whether the proposed question supports a result already won or seeks an additional result lost below. The latter requires the aggrieved party's own application under the reference scheme considered here. A winning party's rejected supporting ground belongs to the narrower second category and cannot be used to smuggle an independent claim into another party's reference. Keep the jurisdiction outcome separate from the unexamined merits of the tax and dividend provisions.

The government-hosted 2011 compilation supplies two bounded version checks: section 2(22), Explanation 2, includes profits up to distribution or payment for the specified subclauses including (e), while section 256(1) is confined to Tribunal orders before 1 October 1998 (physical pages 55 and 912). Neither the old dividend result nor its reference machinery should be presented as a timeless rule. This is no certification of current procedure or of the law under the Income-tax Act, 2025.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Original decision date, bench, author and certificate appeal

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR 944 heading; 945 D–F

Source role: reported metadata and judicial text

2.

Topic: Assessment year, mixed statutory history and two actual reference questions

Source url: [Open cited source](#)

Pdf pages: 2; 3; 4

Paragraphs: SCR 945 F–947 B

Source role: judicial text

3.

Topic: 1922 dividend holding and rejected 1961-definition comparison

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 947 C–949 E

Source role: judicial text

4.

Topic: Jurisdiction objection and independent section 256 construction

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 949 E–950 G

Source role: judicial text

5.

Topic: Two categories of reference standing and supporting-ground exception

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: SCR 950 G–952 C

Source role: judicial text

6.

Topic: Independent relief, void reference, unexamined merits, split disposition and costs

Source url: [Open cited source](#)

Pdf pages: 9

Paragraphs: SCR 952 D–G

Source role: judicial text

7.

Topic: Different dividend definition and later limit on reference route

Source url: [Open cited source](#)

Pdf pages: 55; 912

Paragraphs: Section 2(22), Explanation 2; section 256(1)

Source role: bounded later statutory comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.S. Pathak, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (reference jurisdiction); Indian Income-tax Act, 1922 (separate historical dividend merits)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: section 2(6A)(e), with section 2(6A)(c) discussed by analogy; Income-tax Rules, 1962: rule 48, prescribed reference application

INDIVIDUAL REFERENCE QUESTIONS AND THEIR DISTINCT RESULTS

1.

Number: 1

Requested by: Commissioner, who alone filed the reference application

Text: Whether, on the facts and in the circumstances of this case, the Appellate Tribunal was legally correct in holding that the accumulated profit will not include current profits for the purpose of section 2(6A) of the Indian Income Tax Act, 1922?

Supreme court result: High Court answer in the affirmative, for assessee, upheld

2.

Number: 2

Requested by: Assessee, without filing his own reference application

Text: Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs.18,950 constituted accumulated profits for the purpose of section 2(6A) of the Indian Income Tax Act, 1922?

Supreme court result: Reference void; High Court opinion set aside; merits not examined

SOURCE AND LIMITS OF THE REPRODUCED REFERENCE QUESTIONS

Questions reproduced from physical page 3/SCR 946 F–H, with spacing normalised; the broader question number 2 concerned the separate Rs.11,000 tax and Rs.6,900 dividend provisions.

SOURCE & VERIFICATION

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

Identified source rendition: 9 PDF pages; SHA-256

02daf3b84344d89f71dd984766aa6f4b136f883ea53958fb8d8c4ecf0a50b797. Original bytes preserved.

Unnumbered judicial body begins physical page 2/SCR 945 E and ends page 9/SCR 952 G. Page 1 and opening page 2 are editorial headnotes, followed by appellate metadata. One judgment, no neighbouring case.

[Open cited source rendition](#)

The judicial text independently construes section 256 of the 1961 Act at SCR 949–952; the separate section 2(6A)(e) merits are 1922 law.; The original report heading dates the decision 15 October 1979; the 1980 report/asset year is not the decision year.; The judicial body attributes the judgment to R.S. Pathak, J.; the catalogue's judge-star convention is not relied on for authorship.; The two questions seek distinct relief. The limited right of a wholly successful respondent to support the Tribunal result cannot be turned into an entitlement to add unrelated questions.; The second question's merits were expressly not examined; setting aside the High Court opinion was a jurisdiction result, not a merits ruling that either provision must or must not be deducted.; The headnote places section 256 in a heading dominated by the 1922 Act; the judicial reasoning expressly identifies section 256 of the Income-tax Act, 1961.

Previous year ended 31 March 1959. The judicial body expressly describes reopening under 1961 section 147 and a certificate appeal under section 261, while dividend computation is governed by 1922 section 2(6A)(e). The independently reasoned section 256 holding supports KEEP; no additional section 297 transition holding is inferred.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no present-law certification. Identify the applicable statutory version and procedural route separately.

LATER TREATMENT

Source checked 2026-10-05. not_verified. Bounded later statutory comparison only: government-hosted 2011 compilation, physical page 55, section 2(22), Explanation 2 opening rule for subclauses (a), (b), (d) and (e), and physical page 912, section 256(1) temporal limitation. Corpus name discovery did not establish a later citing judgment relied on here. No comprehensive citation history, current-law validation or 2025 mapping.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 9](#)

SHA-256: 02daf3b84344d89f71dd984766aa6f4b136f883ea53958fb8d8c4ecf0a50b797

[official hosted statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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