

Ice & General Mills v. Income Tax Officer, Central Circle II, Meerut

Civil Appeal No. 2015 of 1972

[1980] 2 SCR 236 | 1979-11-20

Could the ITO issue a fresh section 148 notice for the same allegedly escaped income when section 34 proceedings were factually pending on 1 April 1962 but their reassessment order was later annulled?

297(2)(d)(ii) | 147 | 148

Two judges | V.D. Tulzapurkar, J. | E.S. Venkataramiah, J.

Assessment years: 1961-62

Historical 1922-to-1961 transition; factual pendency and jurisdiction must be kept distinct

This decision concerns section 34 proceedings actually pending on 1 April 1962 for the same alleged escaped income and a later section 148 notice. The Court both applied factual pendency and rejected Revenue's specific non-est argument on the record. It did not validate every defective notice, revive the annulled reassessment or decide the alleged income on its merits. The original year was 1961-62; the decision date is 20 November 1979 despite the 1980 report. The source inconsistently prints the cited Gujar Mal Modi provision and ITR page; these are not corrected silently. Comprehensive later treatment, current-law applicability and 2025 mapping remain not_verified.

01 FACTS OF THE CASE

The appellant firm manufactured ice and preserved potatoes in cold storage. Its AY 1961-62 assessment dated 5 July 1961 was on total income of Rs. 53,548. Section 34(1) proceedings under the 1922 Act began on 21 December 1961. The ITO brought certain property income and Rs. 1,00,000 attributed to potato transactions in benami names to tax by an order dated 22 December 1965. The Appellate Assistant Commissioner annulled that order on 10 May 1967 because initiation of reassessment was not justified. Revenue did not challenge the annulment, which became final (physical 2/SCR 237 E-H).

On 14 July 1967, after obtaining the Commissioner's sanction, the ITO issued a section 148 notice under the 1961 Act for the same assessment year. His sanction report identified the same Rs. 1,00,000 as concealed income from benami potato storage. The firm filed a return under protest on 14 August 1967 and challenged the notice by writ petition. It relied on section 297(2)(d)(ii), because proceedings concerning that income were pending on 1 April 1962. The High Court rejected the objection on the view that the old proceedings had to be legally valid and within jurisdiction (physical 2 H-3 C/SCR 237-238).

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

02 DISCUSSION BY THE HON'BLE COURT

Tulzapurkar J held that the High Court's approach could not stand with *S.B. Jain v. Mahendra and Gujar Mal Modi v. CIT*. Those Supreme Court decisions, delivered after the High Court's judgment here, treated factual pendency of section 34 proceedings at the commencement of the 1961 Act as material under section 297(2)(d)(ii), rather than their legality (physical 3/SCR 238 D-E).

In the Court's account, S.B. Jain involved a section 34 notice later quashed as time-barred; the pending proceeding at 1 April 1962 still barred a fresh section 148 notice. Gujar Mal Modi involved defective service on only one heir, followed by an attempted new-Act notice to all heirs. The operative point adopted from both was factual pendency. Here it was admitted that section 34 proceedings concerning the Rs. 1,00,000 item were factually pending on 1 April 1962. The impugned section 148 notice was therefore incompetent (physical 3 E-4 D/SCR 238-239).

Revenue separately argued that this case was distinguishable because the former proceedings lacked jurisdiction and were non est. The Court rejected the factual premise. The 22 December 1965 order showed initiation under section 34(1)(b), concerning property income and information obtained from an AAC order for an earlier year. It was not initiation under section 34(1)(a) for failure to disclose property-income particulars. During those proceedings the ITO encountered the Rs. 1,00,000 item, which he considered concealed and includible under section 34(1)(a). On that record initiation could not be treated as jurisdictionless and non est (physical 4 E-5 A/SCR 239-240).

The distinction matters: the Court applied the factual-pendency rule and also rejected Revenue's particular jurisdictionless-initiation contention. It did not restore the annulled reassessment, validate every defective old notice or freshly adjudicate whether the Rs. 1,00,000 was taxable income. Revenue had allowed the AAC's order to become final and could not use the new-Act notice in these circumstances (physical 5 A-B/SCR 240).

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

03 JUDICIAL DECISION

The section 148 notice was incompetent because old section 34 proceedings for the same alleged escaped income were factually pending on 1 April 1962. Civil Appeal No. 2015 of 1972 was allowed, the High Court's order set aside and the notice quashed. Any orders passed pursuant to it would be of no avail to Revenue. There was no order as to costs (physical 5/SCR 240 B-C).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee / appellant firm

Appeal allowed; High Court order set aside; impugned section 148 notice quashed

Final reasoned construction and application of the transitional jurisdiction rule; no remand

The source uses a conditional formulation for orders pursuant to the notice. Their existence, dates or amounts are not supplied. No revival of the earlier annulled order, fresh tax computation or refund award is ordered.

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

05 AKHB REVIEW POINT

Start with the chronology at 1 April 1962 and identify the escaped-income item, the old notice and the actual pending proceeding. A later annulment does not by itself erase the factual pendency that controlled this transitional route. Separately analyse the asserted jurisdictional defect: this Court rejected Revenue's non-est premise on the actual distinction between section 34(1)(b) initiation and the subsequently discovered section 34(1)(a) item. Do not replace those facts with a general proposition that all invalid notices create valid proceedings.

A bounded check of the Income Tax Department's section 297 HTML text, labelled Year 2004, confirms the no-pending-proceeding condition in clause (2)(d)(ii), the distinct continuation route in (d)(i) and the express sections 149/150 limits. This historical transition decision does not supply a general rule for every later reassessment regime. Targeted later-citation and adverse-treatment searches did not authenticate a later primary decision directly addressing this holding; that limited result is not proof that none exists. Comprehensive later treatment, current-law applicability and 1961-to-2025 mapping remain not_verified.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 2015 of 1972

Outcome: Allowed; High Court order set aside and section 148 notice quashed; consequential orders, if any, of no avail to Revenue; no order as to costs

Costs: No order as to costs

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: Printed identity, actual 1979 date, certificate proceeding and initial facts

Source role: identity and judicial text

2.

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 237 E-238 C: old and new proceedings, dates, amounts and High Court approach

Source role: judicial text

3.

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 238 D-239 D: adopted factual-pendency rule and application

Source role: judicial text

4.

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 239 E-240 B: specific non-est argument and old-subsection distinction

Source role: judicial text

5.

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: SCR 240 B-C: complete disposal and no-costs order

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Old-Act assessment/reassessment for AY 1961-62, followed by a new-Act section 148 notice. The actual legal holding construes section 297(2)(d)(ii) and the competence to initiate fresh sections 147/148 proceedings. It does not convert the old assessment into a 1961 Act merits computation.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

V.D. Tulzapurkar, J.; single opinion of the Court

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922, section 34(1)(b): actual initiation concerning property income; Indian Income-tax Act, 1922, section 34(1)(a): ITO's treatment of the later-discovered Rs. 1,00,000 item and cited-case context; Sections 297(2)(d)(i), 149 and 150: bounded statutory context only, not independently adjudicated claims

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: official department statutory HTML

Title: Income-tax Act, 1961, section 297: Repeals and savings

Url: [Open cited source](#)

Displayed version: Year 2004

Accessed at: 2026-10-05T19:30:53.626834+00:00

Read bounds: Official HTML title, Act and year label; section 297(1) and complete subsection (2)(a)-(m), corresponding web-extracted lines 38-85; amendment footnotes at lines 90-99 seen. Reliance is confined to the different transition routes in (a)-(d), (f) and (g).

Finding: Section 297(2)(d)(ii) uses the no-pending-section-34 condition, with sections 149/150 limits; (d)(i) preserves old-notice proceedings. Clauses (f)/(g) distinguish penalties by assessment-completion timing. These are bounded statutory-context checks, not a determination that any particular unadjudicated transition route governed Ambat.

Format: HTML web-extracted text

Raw html retained: False

Pdf integrity applicable: False

Full current amendment history verified: False

Current law certification: False

SOURCE & VERIFICATION

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

Identified source rendition: 5 PDF pages; SHA-256

ce681a48f245fe68f8dffa3f15c1498a49c9059965a428a28aa5a45fec734d72. 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; all listed proceedings accounted for: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

Printed SCR identity, dates, bench and proceedings checked in primary images. Report year 1980 differs from the actual 1979 decision dates. Frozen INSC catalogue identifiers are not independently authenticated and are not used as verified neutral citations. Judicial paragraphs are unnumbered; physical-page and SCR band pinpoints used.

Editorial headnote occupies physical 1-2 B; judicial opinion begins physical 2 D.; The source's Gujar Mal Modi narration first says section 34(1)(a) and later 34(1)(b), physical 4/SCR 239 A-C. The headnote lists 84 ITR 261, while the judicial footnote at physical 3/SCR 238 prints 84 ITR 251. The general section 34 pendency point is the holding used here; the precedent's disputed citation/subsection is not independently corrected.; The chronology and alleged Rs. 1,00,000 are not findings of a new tax liability. The amount of property income is unspecified.; The rejected Allahabad High Court decision is a different decisional level from the Supreme Court reversal; a search result saying the former was overruled is not adverse treatment of this Supreme Court judgment.

Only AY 1961-62 is this assessee's year. AY 1946-47 belongs to the narrated S.B. Jain precedent. The earlier year whose AAC order supplied information to the ITO is unspecified.

One appeal by certificate from the Allahabad High Court order of 18 January 1971 in Civil Misc. Writ Petition No. 4632 of 1970. The two cited Supreme Court cases are precedents, not connected proceedings disposed of here.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 crosswalk or present-day application. Complete amendment history, commencement, savings and later judicial treatment have not been verified.

LATER TREATMENT

Source checked 2026-10-05. Only expressly bounded primary and statutory checks are verified. Comprehensive later treatment, current-law applicability and 1961-to-2025 mapping remain not_verified. No absence-of-adverse-treatment assurance is given.

IDENTIFIED SOURCE LINKS

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

SHA-256: ce681a48f245fe68f8dffa3f15c1498a49c9059965a428a28aa5a45fec734d72

[Income-tax Act, 1961, section 297: Repeals and savings](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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