

Commissioner of Income Tax, Delhi v. Bansi Dhar & Sons

Civil Appeal No. 1668 (NT) of 1978 / Civil Appeal Nos. 77 and 78 (NT) of 1974

[1985] Supp. 3 SCR 850 | 1985-12-19

Whether the High Court may use inherent or incidental powers, including CPC section 151, to stay tax recovery while exercising the advisory reference jurisdiction under section 66 of the 1922 Act or section 256 of the 1961 Act.

256(1) and (2) (reference jurisdiction) | 254 (Tribunal appellate power and ancillary stay power) | 260 (giving effect to reference answer) | 265 (tax payable despite reference or appeal) | 257, 261 and 262 (reference/appeal scheme discussed)

Two-judge bench | V.D. Tulzapurkar, J. | Sabyasachi Mukharji, J.

Assessment years: 1960-61, 1962-63

Reference jurisdiction only; other powers and source limits must remain visible

This decision limits recovery stays within the historical section 66/256 advisory reference jurisdiction; it expressly preserves appropriate appellate-authority stays and separate High Court action under Articles 226/227. It is not a universal bar on constitutional or appellate stays and does not decide the HUF insurance merits. The report inconsistently describes the statutory route of some Delhi years and gives no separate Patna years. Later section 260A requires separate analysis; comprehensive later treatment, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

The Delhi proceedings arose from the competing individual and HUF treatment of income earned on Rs.2,49,874 received by Lala Bansi Dhar on his father's death under an accident insurance policy. Until AY 1959-60 the income had been assessed personally. For AYs 1960-61 and 1962-63, the Tribunal ultimately accepted the Revenue's HUF treatment, and a question about the character of the insurance proceeds was referred to the High Court. The HUF sought a recovery injunction under CPC section 151 pending those references, pointing out that tax on the same income had already been paid in the karta's personal assessments (physical pages 6-8/SCR 855-857).

The Delhi High Court rejected the Revenue's jurisdictional objection and granted a stay conditional on adequate security. Civil Appeal 1668 (NT) of 1978 challenged that order of 15 July 1977 in References 82 and 83 of 1973. Civil Appeals 77 and 78 (NT) of 1974 challenged Patna High Court stays of 30 July 1973 in Tax Appeals Cases 16 and 17 of 1972. The report supplies no separate Patna assessment years or full underlying facts. At the Supreme Court hearing, counsel stated that the Delhi reference had meanwhile been answered for the assessee, making the immediate stay question academic for that assessee; the Court nevertheless decided the jurisdiction question in the connected appeals (physical pages 5-9).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished a statutory reference from an appeal. Under the historical scheme, the Tribunal retained the appeal and ultimately passed the operative order conforming to the court's answer. The High Court's task under section 66 or section 256 was advisory or consultative, not original, appellate, revisional or general supervisory adjudication. Sections 66(7) and 265 also contemplated payment of tax notwithstanding a reference; the existence of a reference did not itself stop recovery (physical pages 9–11 and 15–16).

Inherent and incidental powers remained available to make that advisory function effective. Examples included restoring a reference dismissed for failure to lodge paper books, allowing procedural opportunities, and obtaining a proper statement of facts. But an injunction against tax recovery did not serve the act of answering the referred question and would improperly enlarge the court's limited reference jurisdiction (physical pages 16–18 and 21).

M.K. Mohammed Kunhi concerned the Tribunal's appellate jurisdiction under section 254 and its ancillary power to protect an appeal from becoming futile. Its mention of the Andhra Pradesh decision in Polisetti Narayana Rao was not approval of a reference court's power to stay recovery. The Court agreed with Sridhar and Dwarka Prasad Baja and rejected the contrary Andhra Pradesh view. Re-enactment of similar language did not conclusively adopt that single, contested High Court construction: the interpretive presumption depended on a settled and recognised interpretation (physical pages 13–15 and 19–22).

The Court expressly preserved the distinction between lack of stay power in reference jurisdiction and other available remedies. In an appropriate case the assessee could seek a stay from the appellate authority until the reference was disposed of or for a period that authority considered fit. A decision made without jurisdiction, in excess of it or through its improper exercise could be corrected by the High Court under Articles 226 and 227. Those separate constitutional powers were not being exercised in these stay applications (physical pages 20–22). The ruling must not be enlarged into a universal prohibition on High Court or Supreme Court stays under every independent constitutional or appellate jurisdiction.

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

03 JUDICIAL DECISION

All the Revenue's appeals were allowed and the challenged High Court judgments and orders granting stays were set aside. Each party was directed to bear its own costs. The Supreme Court did not determine whether the insurance proceeds were ancestral property or whether the disputed income belonged to the individual or HUF, and it did not order a merits remand (physical page 22/SCR 871 A–D).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the reference-jurisdiction question

Civil Appeal 1668 (NT) of 1978 and Civil Appeals 77 and 78 (NT) of 1974 allowed; impugned High Court judgments/orders set aside; parties to bear their own costs

Final reasoned ruling on jurisdiction to grant a recovery stay within the historical reference scheme; underlying assessment merits not decided

No stay power arises merely from section 66/256 reference jurisdiction. Appropriate appellate stays and separate Articles 226/227 control were expressly preserved; no universal ruling about all constitutional or later statutory appellate powers.

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

05 AKHB REVIEW POINT

Identify the court's capacity before relying on a stay precedent. The same High Court may possess separate constitutional powers while lacking the particular power invoked within a tax reference. Keep the statutory route, the authority still seized of the appeal and the grounds for supervisory correction distinct. Bansi Dhar supplies a jurisdictional allocation, not an automatic entitlement to a stay from another forum or a merits answer about HUF property.

A bounded check of the Department of Revenue-hosted 2011 compilation confirms that later section 260A describes an appeal to the High Court and subsection (7) applies relevant CPC appellate provisions; the amendment-history footnotes identify the later legislative changes (physical pages 914–915). This demonstrates why the reference holding should not be mechanically carried over to section 260A. It does not certify present statutory text, modern stay conditions or comprehensive later judicial treatment. The report's inconsistent year-specific reference descriptions should remain visible rather than be repaired by assumption.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and both appeal groups

Source url: [Open cited source](#)

Pdf pages: 1; 5; 6

Paragraphs: SCR 850 A–B; 854 F–H; 855 A–D

Source role: reported metadata and judicial text

2.

Topic: Delhi facts, years and stay application

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: SCR 855 D–H to 857 H

Source role: judicial text

3.

Topic: Patna stays, academic Delhi issue and narrative statutory-route discrepancy

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR 857 H–858 E

Source role: judicial text

4.

Topic: Historical reference scheme, payment and retained appellate jurisdiction

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR 859 A–860 G

Source role: judicial text

5.

Topic: Appellate stay distinguished from reference jurisdiction

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15

Paragraphs: SCR 862 G–864 E

Source role: judicial text

6.

Topic: Permitted ancillary reference procedures

Source url: [Open cited source](#)

Pdf pages: 16; 17; 18

Paragraphs: SCR 865 C–867 H

Source role: judicial text

7.

Topic: Re-enactment argument and limited presumption

Source url: [Open cited source](#)

Pdf pages: 19; 20

Paragraphs: SCR 868 B–869 B

Source role: judicial text

8.

Topic: Appellate remedy, constitutional control and exact conclusion

Source url: [Open cited source](#)

Pdf pages: 20; 21; 22

Paragraphs: SCR 869 H–871 D

Source role: judicial text

9.

Topic: Bounded later procedural-framework comparison

Source url: [Open cited source](#)

Pdf pages: 914; 915

Paragraphs: Sections 260 and 260A(1)–(7); amendment-history footnotes separately identified

Source role: bounded later statutory comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Sabyasachi Mukharji, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 and Indian Income-tax Act, 1922 (reference-jurisdiction decision)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: sections 66, including 66(4), (5), (7), and 66A; Code of Civil Procedure, 1908: section 151; Constitution of India: Articles 226 and 227 (separate jurisdiction expressly preserved)

SOURCE & VERIFICATION

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

Identified source rendition: 22 PDF pages; SHA-256

0d2fc8efe95b15df64c2bda23d84bac6e27ff002b09e1a2b0039bed348a1c481. Original bytes preserved.

Unnumbered judicial body begins physical page 6/SCR 855 C and ends page 22/SCR 871 D. Pages 1–5 contain reporter headnotes and appellate metadata; no neighbouring judgment.

[Open cited source rendition](#)

The judicial body expressly decides both section 66 of the 1922 Act and section 256 of the 1961 Act. However, its historical narrative assigns section 256(1) to the Delhi common order at page 7 and section 66(1) to the first two years at page 9; the precise year-specific procedural allocation is not resolved here.; The source also describes the later-year proceedings differently at pages 7 and 9. Those years are background only; no invented Supreme Court appeal or year assignment is made.; The formal appellate line on page 5 identifies the Delhi and both Patna appeals; the Patna respondents and assessment years are not separately named in the judicial body.; The Delhi reference was reported at the hearing to have been answered for the assessee. That statement does not turn this recovery-jurisdiction appeal into a Supreme Court decision on ancestral property.; Editorial headnotes contain slips, including an erroneous section 66/1961 description. Judicial text and page images control; page 6 correctly prints Reference Nos. 82 and 83 notwithstanding the OCR reading 81.; The separate Articles 226/227 remedy and appellate-authority jurisdiction are material qualifications. A universal no-stay proposition, including independent Supreme Court constitutional powers, would exceed this holding.; The later government-hosted compilation has a Taxmann imprint and flags some prospective National Tax Tribunal insertions as not notified. The bounded comparison does not certify those insertions as operative or purport to be current law.

AYs 1960-61 and 1962-63 identify the Delhi stay applications. AYs 1963-64 and 1964-65 and 1965-66 through 1969-70 are background proceedings, not additional identified Supreme Court appeals in this report. Years and respondent identities in the Patna appeal group are not separately supplied. The judicial account is inconsistent in describing the statutory route of the Delhi references: page 7 says section 256(1), while page 9 says section 66(1) for the first two years. No year-by-year route is silently harmonised. Eligibility rests on the Court's express reasoned ruling on both statutory schemes.

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 2026-10-04. not_verified. Actual bounded later check: Department of Revenue-hosted Income-tax Act 2011 compilation, physical pages 914–915, section 260, section 260A(1)–(7) and separate editorial amendment-history footnotes. This is a procedural-framework comparison, not a complete citing-case treatment search or present-law validation. A targeted web search for Bansi Dhar with section 260A was used only as discovery; secondary-result summaries are not relied on for the holding.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 22](#)

SHA-256: 0d2fc8efe95b15df64c2bda23d84bac6e27ff002b09e1a2b0039bed348a1c481

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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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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