

COMMISSIONER OF INCOME-TAX, NEW DELHI (NOW RAJASTHAN) v. EAST WEST IMPORT & EXPORT (P).LTD., (NOW KNOWN AS ASIAN DISTRIBUTORS LTD), JAIPUR.

Civil Appeal No. 1294 (NT) of 1975; Originating High Court proceedings: I.T. Reference No. 22 of 1965

[1989] 1 SCR 570 | 1989-02-08

For the old section 23A exception, the relevant shares had to be freely transferable throughout the previous year. Removing transfer restrictions only shortly before year-end did not qualify the company as one in which the public were substantially interested.

2-judge bench | R. S. Pathak, C.J. | Ranganath Misra, J.

Exact historical timing condition

The full-year rule interprets the old 23A Explanation. Later company-status and undistributed-profit provisions require a separate statutory check.

Operative context: Indian Income-tax Act, 1922; 23A(1) Explanation, 66(1).

01 FACTS OF THE CASE

The company was incorporated at Jaipur in 1942 as Rajputana Investment Company Private Limited. Articles 4, 81 and 82 restricted transfers of its shares to the public. At an extraordinary general meeting on 26 March 1951, those provisions and the shareholder-number limit were removed.

For assessment year 1951-52, with accounts closing 31 March 1951, the company claimed the section 23A benefit because transferability existed before year-end. The officer and first appellate authority rejected the claim; the Tribunal and Bombay High Court accepted it. Revenue appealed on the duration of the statutory transferability condition.

Source: [SCR 572 D-H;573 A-D](#)

02 DISCUSSION BY THE HON'BLE COURT

The Explanation linked public-company status to specified public ownership and either stock-exchange dealings or actual free transferability of the relevant shares. The case was confined to how long free transferability had to exist. The Court did not need to determine every other statutory condition.

The wording deliberately used two temporal expressions. Public beneficial ownership was measured “at the end” of the previous year; the relevant dealings or transferability condition operated “in the course” of it. Treating both as a year-end snapshot would deprive that distinction of meaning.

The Court read “course” as duration or continuing progress from the beginning to the end of the year. In this setting, free transferability therefore had to exist throughout the year. The anti-avoidance purpose of section 23A, described in *Afco*, supported that reading. Because the restrictions remained until 26 March 1951, the company failed the condition despite their removal for the last few days. The holding concerns the quality and duration of transferability; it does not add an independent requirement that a particular shareholder must actually have transferred shares.

Source: [SCR 573 D-H:574 A-H:575 A-F](#)

03 JUDICIAL DECISION

Revenue’s appeal was allowed, the High Court order set aside, and the reference answered against the company. Each side was directed to bear its own costs throughout.

Source: [SCR 575 F-H:576 A](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue appeal allowed; reference answered against assessee. Result: Revenue. Costs: Parties bear own costs throughout. Scope: Section 23A public-interest exception unavailable for the year. Limit: Interpretation of the exact historical Explanation and its timing language.

Source: [SCR 576 A](#)

05 AKHB REVIEW POINT

For a status test, create a dated record of the articles, ownership and transfer restrictions instead of checking only the closing-day position. Distinguish conditions that operate at a point in time from those spanning a period. Do not carry this repealed undistributed-profit regime into a later public-company definition without comparing its actual words.

Source: [SCR 574 A-H:575 B-F](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

7-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

SCR 574 E-F attributes whole-year language to the Tribunal and High Court despite their taxpayer-favourable outcome. That internal summary inconsistency is not silently corrected; the Supreme Court's own construction and operative answer at 575-576 are unambiguous. Printed party punctuation is retained.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 23A(1) Explanation, 66(1).

The 2011 compilation records sections 104-109 omitted from 1 April 1988. The old 23A regime should not be presented as a continuing undistributed-profits charge; current section 2(18) wording was not comprehensively reverified.

Section 2(29) supplies multiple public-interest-company routes. For a non-private company, clause(f)(i) tests listing on the last day; clause(f)(ii) tests specified beneficial holdings throughout the year. These differ from the old free-transferability test.

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, as amended by Finance Act 2011; supplied DOR compilation](#)

Chapter XI omission note and section 104; physical 585, printed 1.544. Selected text only; not current 1961 consolidation or image verification.

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

Section 2(29); physical 7-8, lines 251-295. Selected web-extracted text; no raw-PDF/image verification or all-amendments certificate.

[Statutory comparison pinpoint](#)

Section 2(29); physical 7-8, lines 251-295.

[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 AKBH Review Point is editorial analysis, not part of the Court's judgment.

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