

# The Commissioner of Income Tax Central-I, Bombay v. Messrs Empire Estate, Bombay

Tax Reference Case Nos. 13–14 of 1983

[1996] 1 SCR 1004 | 1996-01-29

**Whether the death of a partner, with no contractual provision continuing the firm, caused dissolution and succession requiring two assessments under section 188 rather than a single assessment under section 187.**

187(1)–(2), historical text | 188 | 257 | 170 (cross-reference in section 188)

Three-judge bench | J.S. Verma, J. | S.P. Bharucha, J. | Sujata V. Manohar, J.

Assessment years: 1975-76

## Reference answer; deed-specific holding and source-date caution

The judicial order answers a section 257 reference for the assessee; “Appeal dismissed” is the reporter’s label. Separate assessments turn on dissolution because this deed had no survival clause. The source prints AY 1975-76 and a first period beginning 1 June 1973, yet says the proviso effective 1 April 1975 did not affect the earlier death. Those dates and that statement are preserved, not corrected. Later treatment and current-law/2025 application are unverified.

## 01 FACTS OF THE CASE

The assessee firm was constituted under a deed dated 18 July 1968 with Ellen Keki Modi, Rustom Keki Modi and Maneck Keki Modi as partners. Ellen Modi died on 12 January 1974. The deed contained no provision continuing the partnership after a partner’s death. Although no separate dissolution deed was executed, the survivors entered a fresh partnership from 13 January 1974 and recorded that the earlier partnership had dissolved on 12 January (physical page 3 / SCR 1006).

The report expressly identifies AY 1975-76 and an accounting year ending 30 June 1974. It states that two returns covered 1 June 1973–12 January 1974 and 13 January–30 June 1974. Those printed dates are retained without silently substituting 1 July or another assessment year. The ITO rejected the succession argument, and the first appeal failed. The Tribunal accepted it and directed separate assessments. Because High Courts had differed, it referred the question directly to the Supreme Court under section 257 (physical pages 2–3 / SCR 1005–1006).

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

## 02 DISCUSSION BY THE HON'BLE COURT

The Court read section 187 together with section 188 and section 42(c) of the Partnership Act, 1932. Section 42 makes dissolution by death subject to the partners' contract. Where the deed preserves the firm despite a partner's death, the surviving firm may be reconstituted within section 187. Here no such clause existed, so the original firm ceased to exist. Continuation of the business by the survivors under a new partnership was succession attracting section 188 and separate predecessor and successor assessments (physical pages 4–5 / SCR 1007–1008).

The Court noted the 1984 amendment's proviso to section 187, stated to operate retrospectively from 1 April 1975, but expressly said that the assessee's case was not affected because the death occurred on 12 January 1974. That is the judgment's own reasoning and is preserved as such, alongside its printed AY 1975-76; this note does not repair the date sequence or independently certify the proviso's application (physical page 4 / SCR 1007).

Wazid Ali Abid Ali was treated as covering the issue. The Revenue's Allahabad authorities were distinguished because the respective deeds provided that death would not dissolve those partnerships. The result therefore depended on actual dissolution and the terms of the deed, not the bare continuity of some partners or of the business (physical pages 5–7 / SCR 1008–1010).

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

## 03 JUDICIAL DECISION

The Court answered the referred question in the affirmative and in favour of the assessee: the Tribunal was justified in directing two assessments and the case did not fall within section 187(2). There was no order as to costs. This is the operative resolution of Tax Reference Case Nos. 13–14 of 1983; the reporter's concluding "Appeal dismissed" label is not substituted for the Court's actual reference answer (physical page 7 / SCR 1010).

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

## 04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Section 257 reference answered affirmatively for the assessee; separate assessments upheld; no order as to costs

Final reasoned answer on the referred legal question

Deed contained no survival-on-death provision and dissolution was found. The result does not determine the assessment of a firm whose deed validly continued it after death.

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

**05 AKHB REVIEW POINT**

The first review task is to establish whether the same firm survived, not merely whether the same trade continued. Read the operative partnership deed, any survival clause and the instrument under which business resumed. A new deed acknowledging dissolution may support the succession analysis; the absence of a separate dissolution deed was not decisive here.

Keep the fiscal question separate from a general assertion that every death produces two assessments. Section 187 and section 188 were applied through the proved legal continuity or dissolution of the firm. The authorities relied on by Revenue failed to assist because their contractual facts differed.

For historical use, retain the source's unusual date sequence and its own statement that the retrospective proviso did not affect the case. For any live matter, the relevant-year legislation and later treatment require a separate check; this note is not a present-law certification.

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

**PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES**

1.

**Topic:** Identity, three-judge bench, reference numbers and stated assessment year

**Source url:** [Open cited source](#)

**Pdf pages:** 1; 2

**Paragraphs:** Unnumbered judicial text; physical page numbers refer to this exact rendition

**Source role:** reported metadata and judicial text

2.

**Topic:** Partnership deed, death, new firm, exact periods and prior decisions

**Source url:** [Open cited source](#)

**Pdf pages:** 2; 3

**Paragraphs:** Unnumbered judicial text; physical page numbers refer to this exact rendition

**Source role:** judicial text

3.

**Topic:** Historical statutory extracts, retrospective proviso statement and operative distinction

**Source url:** [Open cited source](#)

**Pdf pages:** 4; 5

**Paragraphs:** Unnumbered judicial text; physical page numbers refer to this exact rendition

**Source role:** judicial text

4.

**Topic:** Precedent and fact-specific distinction of survival clauses

**Source url:** [Open cited source](#)

**Pdf pages:** 5; 6; 7

**Paragraphs:** Unnumbered judicial text; physical page numbers refer to this exact rendition

**Source role:** judicial text

5.

**Topic:** Affirmative reference answer, costs and conflicting reporter label

**Source url:** [Open cited source](#)

**Pdf pages:** 7

**Paragraphs:** Unnumbered judicial text; physical page numbers refer to this exact rendition

**Source role:** judicial text

## JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.P. Bharucha, J.

## ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

## SOURCE & VERIFICATION

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

Identified source rendition: 7 PDF pages; SHA-256

8de0941e06563a404874bf67a5cc232dfa8d00096901ed4705a99a00146c9d8b. Original bytes preserved.

Complete judicial text physical pages 2–7 / SCR 1005–1010; section 257 reference, stated year and accounting periods, partnership-deed condition, historical proviso discussion and operative answer separated from reporter labels.

[Open cited source rendition](#)

Ingestion metadata lists only Tax Reference Case No. 13 of 1983; the source caption gives Nos. 13–14. This is original reference jurisdiction under section 257, not an ordinary Supreme Court appeal.; The source expressly states AY 1975–76, an accounting year ending 30 June 1974, and a first returned period beginning 1 June 1973. These are not silently regularised.; The Court itself says the proviso effective from 1 April 1975 did not affect the case because death occurred on 12 January 1974. The note reports that statement without independently resolving the temporal anomaly.; The headnote and reporter ending describe an appeal dismissal; the actual judicial order answers the question affirmatively for the assessee with no order as to costs.; The extended Wazid Ali quotation concerns another assessee and another appeal; its names and facts are not additional Empire Estate facts.; No tax amount is stated and no later-treatment or 2025 statutory mapping has been verified.

## STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

## LATER TREATMENT

Source checked 2026-10-04. Later judicial treatment has not been independently verified. Precedents discussed inside this judgment are distinguished from later treatment of this judgment.

## IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 7](#)

SHA-256: 8de0941e06563a404874bf67a5cc232dfa8d00096901ed4705a99a00146c9d8b

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