

Commissioner of Income-Tax, Tamil Nadu v. City Mills Distributors (P) Ltd.

Tax Reference Case No. 11 of 1982

[1996] 2 SCR 109 | 1996-02-05

Whether promoters' pre-incorporation business profit could be assessed as profit earned by a company that did not yet exist.

257

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

Assessment years: 1974-75

Pre-incorporation income was not the company's; later appropriation left open

The company could not earn income before it existed, but the Court did not declare the income tax-free in every hand or decide the later appropriation transaction. The report's precedent-treatment headnote is reversed relative to its judicial reasoning, and its receipt/accrual dates are not silently reconciled. No present-law or comprehensive later-treatment certification is supplied.

01 FACTS OF THE CASE

The company was incorporated on 30 October 1972 and its relevant accounting year ended 30 September 1973. For AY 1974-75 it returned Rs 1,79,690. The ITO included Rs 24,862 as pre-incorporation profit derived from receipts of Rs 80,534, on the view that the promoters had acted for the future company and it later accepted their acts (physical page 3).

The Commissioner (Appeals) rejected the challenge, but the Tribunal held that the promoters and company were different persons and the pre-incorporation income belonged to those who earned it. Because Allahabad and Calcutta High Courts had differed, the Tribunal referred the question directly under section 257. The reported receipt-period narrative says 1–20 October 1972, while the Tribunal account refers to accrual on 29 October; neither is silently recast (physical pages 3–5).

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

02 DISCUSSION BY THE HON'BLE COURT

The decisive question was the identity of the entity carrying on the business and earning the income at accrual. Before incorporation, the company did not legally exist and could not itself have earned the income. Its later decision to accept the promoters' acts or appropriate the income did not retrospectively change who had earned it (physical page 6).

The Court's reasoning adopted the substance of the Calcutta approach in Tea Producing Co. of India Ltd. (48 ITR 200) and rejected the contrary premise that later corporate acceptance could determine the original taxpayer, discussed through Bijli Cotton Mills Ltd. (23 ITR 278) and Security Printers of India (P) Ltd. (78 ITR 766). The editorial list labels the Allahabad cases approved and Tea Producing disapproved, contrary to the direction of the judicial reasoning. The judicial reasoning, rather than those editorial labels, controls this note (physical pages 2, 4-6).

The Court expressly left open whether the subsequent appropriation transaction could itself attract tax, since that was not the reference question (physical page 6).

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

03 JUDICIAL DECISION

The referred question was answered in the affirmative for the assessee: Rs 24,862 of pre-incorporation profit could not be included as the company's earned income for AY 1974-75. There was no order as to costs. The Court did not issue an assessment against named promoters, determine their shares or decide taxation of a later appropriation (physical page 6).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee company on the referred inclusion

Direct reference answered affirmatively for assessee; no costs

Final identity/accrual ruling, with subsequent appropriation expressly reserved

Not a finding that the income escaped tax in all hands or that every later transfer of pre-incorporation income is tax-free.

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

05 AKHB REVIEW POINT

Fix the incorporation date, the accrual event and the person actually carrying on the business. Later corporate adoption of an arrangement does not make the company retrospectively exist. Keep that question separate from identifying the promoters' proper assessment and any later taxable transfer or appropriation.

This direct reference leaves the subsequent appropriation question open. It therefore supplies neither a universal exemption nor an order assessing the promoters. A present transaction also needs examination of its own documents and relevant corporate and tax legislation. No comprehensive later treatment or successor-Act mapping is certified.

Do not copy the editorial precedent list: the source's body follows the no-pre-incorporation-company-income reasoning, while the headnote labels the cited High Court approaches in the opposite direction.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, direct reference, amounts and chronology

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Contrasting High Court approaches as described by the Court

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Identity/accrual holding, reserved appropriation and operative answer

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: Unnumbered judicial text

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: 6 PDF pages; SHA-256

957cb4225f031bb119900fa4b16e1f0dc37165567829880c10ced2352799ced3. Original bytes preserved.

Complete judicial text physical pages 3–6/SCR 111–114, direct reference answer with later appropriation transaction expressly left open.

[Open cited source rendition](#)

The page 2 editorial list labels Bijli Cotton Mills and Security Printers approved and Tea Producing disapproved, opposite to the direction of the judicial reasoning on pages 4–6. The note follows the body's reasoning on pre-incorporation income and does not infer a blanket overruling of every additional authority mentioned in the headnote.; The receipt-period narrative states 1–20 October 1972, while the Tribunal's account refers to 29 October 1972. Both precede incorporation on 30 October; no missing days or corrected receipt schedule are supplied.; The assessed total is printed Rs 2,04,530 and the included disputed profit Rs 24,862; the source says inter alia and does not give a full reconciliation with the returned total. No new arithmetic tax computation is made.; No individual promoter assessment, allocation, refund amount or penalty was ordered. The possible taxation of later appropriation is expressly left unresolved.; This is Tax Reference Case 11/1982 under section 257, not an ordinary Supreme Court appeal dismissed or allowed.

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. No comprehensive later-treatment search is certified. Any actually checked later judgment or statute is expressly identified in this note.

IDENTIFIED SOURCE LINKS[reported judgment - PDF pages: 6](#)

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