

Smt. Kilasho Devi Burman and Others v. Commissioner of Income-tax West Bengal, Calcutta

Civil Appeal Nos. 2242-2246 of 1978

[1996] 2 SCR 301 | 1996-02-08

Whether Revenue had established a valid foundational HUF assessment for AY 1955-56, and whether the High Court could reverse the Tribunal's factual findings as perverse using assertions in Revenue's reference application that were not established in the Tribunal's statement of case.

139(2), AY 1962-63 proceedings | 147(a), historical reassessment provision | 148, proceedings for AYs 1958-59 to 1961-62 | 256(1), historical reference jurisdiction | 143(3), signature principle discussed through Kalyankumar Ray

Two-judge bench | S.P. Bharucha, J. | S. Saghir Ahmad, J.

Assessment years: 1958-59, 1959-60, 1960-61, 1961-62, 1962-63

Mixed historical proceedings; failed proof of signed foundational assessment

The five appeals cover AYs 1958-59 to 1962-63 and depend on proof of an AY 1955-56 HUF assessment. The judgment combines 1922 and 1961 Act issues; it does not decide modern electronic authentication or every partition question. Reference scrutiny was confined to the Tribunal's record, and Revenue's later assertions were not findings. The PDF has a 1958/1968 acknowledgement-date discrepancy. Costs went to the appellants. Later treatment and current-law/2025 application remain unverified.

01 FACTS OF THE CASE

The reference covered AYs 1958-59 to 1962-63, corresponding to Bengali previous years 1364–1368. Its first question asked whether there was a valid HUF assessment for AY 1955-56; the validity of the later assessments was posed conditionally on an affirmative answer. The assessee identified in the judicial narrative was Rash Behari Das Burman, governed by Mitakshara law. He had filed a return on 14 November 1957 as karta of his HUF for AY 1955-56. Revenue's record contained neither a signed assessment order nor a signed assessment form. A demand notice dated 10 April 1958 bore an initial or signature, and an acknowledgement was signed by Phool Singh, whose authority to receive notices was disputed. There was no evidence of payment of the demand (physical pages 3–4 / SCR 303–304).

A partition suit had been settled, though division by metes and bounds remained outstanding when the Tribunal drew its statement. Income from the properties was returned by and assessed on the erstwhile members. The judgment records no section 22 notice to the HUF for AYs 1956-57 to 1961-62 and no original section 139 notice for AY 1962-63. The ITO later proceeded on the view that the HUF had escaped assessment because no genuine partition had occurred: section 148 proceedings covered AYs 1958-59 to 1961-62, while section 139(2) was used for AY 1962-63. Nil returns were filed under protest and HUF assessments followed (physical page 4 / SCR 304).

Revenue relied on the supposed AY 1955-56 assessment and the absence of a section 25A order under the 1922 Act to contend that the HUF continued for assessment. The Tribunal rejected that foundation and set aside the HUF assessments. The High Court on 14 July 1977 treated its findings as perverse, relying in part on a statement annexed to Revenue's reference application that Phool Singh had accepted other notices. The appeals challenge that reversal (physical pages 3–6 / SCR 303–306).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court did not hold that factual findings are entirely immune from reference scrutiny. Revenue's proposed questions had challenged the Tribunal's findings as unsupported, unreasonable and perverse; in that context the High Court could examine whether those findings were perverse. But perversity means a conclusion no properly instructed person could reasonably reach on the record. The advisory reference jurisdiction remained confined to the Tribunal's evidentiary record, rather than permitting a new factual determination on later assertions (physical pages 5–6 / SCR 305–306).

The statement that Phool Singh had received notices on other occasions appeared in Revenue's annexure to its reference application, not in the Tribunal's findings in the statement of case. Describing matters as admitted did not make them findings or evidence available when the Tribunal decided. If additional facts were necessary, the High Court could require a supplemental statement from the Tribunal. It could not use those assertions itself to declare the Tribunal's existing findings perverse (physical page 6 / SCR 306).

The High Court also inferred the existence of an assessment from the demand notice and acknowledgement, without giving proper weight to the absence of a signed assessment order or form in the record Revenue had produced. The Court relied on Kalyankumar Ray for the requirement of authenticated assessment writings, while quoting that decision's recognition that income determination and tax computation need not occupy one form. The requisite writings could be signed or initialled and the tax determination had to be completed within the applicable limitation period; a demand notice alone did not fill the evidentiary gap here (physical page 7 / SCR 307).

A valid AY 1955-56 HUF assessment was central to Revenue's case. Revenue failed to establish it by producing a signed assessment order for that year. The Tribunal was therefore right and its findings were not shown perverse. The judgment resolves this record-based foundation; it does not freshly decide all partition facts or substitute the 1961 Act for the historical section 25A framework (physical pages 4–7 / SCR 304–307).

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

03 JUDICIAL DECISION

The Court allowed the challenge, set aside the Calcutta High Court's judgment and order, and restored the Tribunal's judgment and order. Revenue's failure to establish the foundational valid AY 1955-56 assessment defeated its case for the disputed HUF assessments. The respondents were ordered to pay the appellants' appeal costs; no amount is stated. Although the operative paragraph uses the singular "appeal", the caption groups Civil Appeal Nos. 2242–2246 of 1978 (physical pages 3 and 7 / SCR 303 and 307).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assesseees / appellants

Challenge allowed; High Court judgment and order set aside; Tribunal judgment and order restored; respondents to pay appellants' appeal costs

Final reasoned decision restoring the Tribunal on the failed foundational assessment and impermissible reference-stage fact substitution

Five historical assessment years under reference, dependent on proof of the AY 1955-56 HUF assessment. The result is not a freestanding ruling on every HUF partition, notice-service dispute, modern assessment authentication method or current appellate procedure.

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

05 AKHB REVIEW POINT

In a reference-based challenge to a Tribunal finding, distinguish the evidence actually before the Tribunal, its recorded findings and a party's later account of supposed admitted facts. A properly raised perversity issue allows legal scrutiny of the finding on that record. It does not let the reviewing court replace the record with an annexure to the reference application. Where genuinely missing facts matter, the supplemental-statement route identified by the Court is different from treating counsel's or a party's assertion as proved.

For the assessment-validity point, obtain the complete contemporaneous order and computation record. The case is about the failure to produce an authenticated foundational assessment, not a universal insistence that every component appear on a single sheet. A demand notice and disputed acknowledgement did not establish the missing signed order here. Do not extrapolate these paper-record facts into a present rule about electronic signatures or faceless assessments without checking the current legislation and later cases.

Keep the periods and enactments distinct. AY 1955-56 is the foundational assessment; AYs 1958-59 to 1962-63 are the reference years. The 1922 Act section 25A argument and the 1961 Act procedural steps both matter. The Court restored the Tribunal because Revenue's foundation failed; the note should not independently certify partition or all of the Tribunal's quoted reasoning as a universal rule. Costs were awarded to the appellants, unlike a no-costs disposal.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, five-appeal caption and referred questions

Source url: [Open cited source](#)

Pdf pages: 1; 3

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: reported metadata and judicial text

2.

Topic: Foundational AY 1955-56 and five reference years

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

3.

Topic: Partition context and differentiated 1922/1961 procedural steps

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

4.

Topic: Tribunal conclusions and permission to examine properly raised perversity

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

5.

Topic: Reference record, supplemental statement and Revenue annexure limits

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

6.

Topic: Acknowledgement date discrepancy printed in the source

Source url: [Open cited source](#)

Pdf pages: 4; 6

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

7.

Topic: Authenticated assessment principle, restoration and costs to appellants

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.P. Bharucha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 / Indian Income-tax Act, 1922 (mixed assessment years)

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 7 PDF pages; SHA-256

a3abd99ee0e97f59b76bd2e55fb348ea9cc5f64a2af002fe05bab8a116bf8f94. Original bytes preserved.

Complete judicial text physical pages 3–7 / SCR 303–307; editorial headnote pages 1–2 separated. Five-appeal caption, AY 1955-56 foundational question, five assessment years under reference, 1922/1961 provisions, Tribunal findings, High Court record error and operative costs direction separately checked.

Open cited source rendition

The caption is Civil Appeal Nos. 2242–2246 of 1978, covering five appeals; ingestion metadata gives only No. 2242. The judgment and reporter's final label use the singular appeal.; The decision date is 8 February 1996. AY 1955-56 is the foundational question, not an additional sixth appeal year; the reference itself covers AYs 1958-59 through 1962-63.; The case combines earlier-year / 1922 Act questions with 1961 Act proceedings and AY 1962-63. Do not label every assessment as originally under the 1961 Act.; Physical page 4 / SCR 304 dates the acknowledgement 25 April 1958; physical page 6 / SCR 306 prints 25 April 1968. This internal date discrepancy is preserved rather than silently repaired.; The assertion that Phool Singh repeatedly received notices is Revenue's reference-application assertion, not a Tribunal fact finding. The Court did not affirm his authority to receive service.; The Tribunal's six quoted propositions at physical page 5 must be separated from the Supreme Court's stated rationale. The latter turns on the missing signed foundational assessment and the improper reversal of factual findings.; Section 143(3) is discussed through Kalyankumar Ray. Its quoted allowance for separate authenticated income and tax-computation writings prevents a misleading single-form rule.; The respondents must pay the appellants' appeal costs. The judgment gives no quantum; it does not order no costs.; Later treatment, modern authentication procedures, current HUF rules and Income-tax Act, 2025 mapping remain unverified.

This is a mixed historical case: the foundational alleged HUF assessment is AY 1955-56 under the earlier regime; section 25A of the 1922 Act is central to Revenue's continuation premise. The appealed reference covers AYs 1958-59 to 1962-63, with sections 147(a), 148 and 139(2) of the 1961 Act expressly describing the later proceedings. Section 143(3) appears in the quoted Kalyankumar Ray authority on completed assessment writings; do not portray AY 1955-56 as originally assessed under the 1961 Act. Sections 22 and 24B of the 1922 Act also appear in the narrative / Tribunal quotation.

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: a3abd99ee0e97f59b76bd2e55fb348ea9cc5f64a2af002fe05bab8a116bf8f94

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