

The III Income Tax Officer, Circle-I, Salem and Another v. Arunagiri Chettiar

Civil Appeal Nos. 1615–1616 of 1979

[1996] Supp.2 SCR 461 | 1996-05-07

Whether an erstwhile partner remained liable for the firm's tax arrears attributable to accounting years during which he was a partner, under the 1961 Act before section 188-A took effect.

2(23), historical definition | 156 | 182–189, historical scheme | 187(1)–(2) | 189(3), inapplicable on these facts | 188-A, later provision discussed

Two-judge bench | B.P. Jeevan Reddy, J. | Suhas C. Sen, J.

Assessment years: 1962-63, 1963-64

Pre-1989 firm debt; notice issue not decided

This judgment imposes liability for firm tax from periods when the respondent was a partner, despite later retirement. It applies the pre-1 April 1989 scheme, treats section 189(3) as inapplicable and discusses section 188-A separately. Demand notice service was only presumed because unchallenged; no rule dispensing with service was decided. The headnote's section 2(43) is corrected to the body's 2(23). Later treatment and current-law/2025 application remain unverified.

01 FACTS OF THE CASE

Arunagiri Chettiar retired from Sannanna Chettiar and Sons on 19 April 1963. Two new partners joined and the reconstituted firm continued until dissolution on 12 April 1972. Assessments for AYs 1962-63 and 1963-64 were completed on 25 March 1967 and 29 March 1968 respectively. Before retirement, accounts for the relevant accounting years had been made up and his share of profits paid (physical page 3 / SCR 463).

On 23 February 1972 the ITO told him that he was jointly and severally liable for the firm's arrears for those years. He argued that his retirement and the change in constitution left only the later firm responsible. Recovery followed and his properties were attached. The Madras High Court allowed his two writ petitions on 17 January 1978, following the Kerala Full Bench in C.V. George: he was not a partner on dissolution for section 189(3), and the 1961 Act lacked the old section 46(2) proviso giving civil-court recovery powers. Revenue brought these two appeals (physical pages 3–4 / SCR 463–464).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court expressly considered the provisions as they stood before 1 April 1989. Historical section 2(23) adopted Partnership Act meanings. The nature of an ordinary partnership and section 25 of that Act made partners jointly and severally liable for firm acts during their membership; that provision did not distinguish continuing from retired partners. Retirement therefore did not discharge liability for tax relating to the period of membership (physical pages 4–8 / SCR 464–468).

The omitted 1922 Act proviso and Order XXI rule 50 of the Code of Civil Procedure concerned enforcement, rather than the source of the substantive partnership liability. The Court approved the Allahabad reasoning in Sahu Rajeshwar Nath, rejected the Kerala Full Bench's contrary premise adopted below, and explained that separate assessment of the firm for tax purposes did not make it a corporate body. The inapplicability of section 189(3) did not dispose of liability on the distinct partnership-law basis (physical pages 8–10 / SCR 468–470).

The Court carefully left a notice issue outside this case. No contention had been raised that a demand notice was not served on the respondent, so it presumed service before attachment; it did not decide that notice could always be dispensed with. It also distinguished a partner's personal tax on share income, which cannot simply be recovered from another partner, from the firm's own tax debt in issue here (physical pages 9–10 / SCR 469–470).

The judgment then quoted section 188-A and stated that, from 1 April 1989, it expressly provided what had previously been implicit. That later provision was explanatory context, not a retrospective statutory route used to decide these older proceedings (physical page 11 / SCR 471).

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

03 JUDICIAL DECISION

Both Revenue appeals were allowed. The Madras High Court judgment was set aside and the respondent's writ petitions stood dismissed. Retirement did not remove liability for firm tax arrears relating to the relevant accounting years when he was a partner. There was no order as to costs (physical page 11 / SCR 471).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Civil Appeal Nos. 1615–1616 of 1979 allowed; High Court judgment set aside; respondent's two writ petitions dismissed; no order as to costs

Final reasoned merits determination on the retired partner's liability

Historic pre-1989 firm-tax recovery for periods of membership. No non-service challenge was decided; section 189(3) was not the source of liability, and another partner's personal share-income tax remained a distinct issue.

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

05 AKHB REVIEW POINT

A retirement date alone does not answer a recovery question. First identify the tax debtor, the relevant previous years and whether the targeted individual was a partner during those years. This judgment concerns the firm's debt during the respondent's membership, not tax from later business operations or another partner's personal liability.

The analysis should also separate substantive liability from recovery procedure. The Court rejected a supposed gap in substantive liability before section 188-A, but it did not adjudicate a disputed failure to serve demand notice. A live recovery file still requires examination of the applicable statutory scheme, notices, service record, arrears, recovery steps and any available procedural objections.

Use the judicial body's section 2(23), not the headnote's section 2(43). Keep section 188-A's later commencement distinct from the law directly applied. The judgment's treatment of earlier authorities is verified within this source; later treatment of this judgment and present-law application are not.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, caption, dates and two assessment years

Source url: [Open cited source](#)

Pdf pages: 1; 3

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

Source role: reported metadata and judicial text

2.

Topic: Retirement, assessments, recovery and High Court rationale

Source url: [Open cited source](#)

Pdf pages: 3; 4

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

Source role: judicial text

3.

Topic: Correct section 2(23), pre-1989 boundary and historical recovery provisions

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

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

Source role: judicial text

4.

Topic: Partnership-law foundation and continuing/retired partner distinction

Source url: [Open cited source](#)

Pdf pages: 7; 8

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

Source role: judicial text

5.

Topic: Demand service assumption and limits of older precedents

Source url: [Open cited source](#)

Pdf pages: 9; 10

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

Source role: judicial text

6.

Topic: Section 189(3) inapplicability, later section 188-A and operative order

Source url: [Open cited source](#)

Pdf pages: 10; 11

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

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B.P. Jeevan Reddy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 11 PDF pages; SHA-256

8077aee81818a99b9cad7f7b0817109204f35b8735991dcd3b6b02c7416dc444. Original bytes preserved.

Complete judicial text physical pages 3–11 / SCR 463–471; pre-1 April 1989 recovery issue, partnership-law foundation, presumed demand service, quoted precedent and prospective section 188-A discussion distinguished.

[Open cited source rendition](#)

The source caption gives Civil Appeal Nos. 1615–16 of 1979; the ingestion metadata truncates this to one appeal. The judgment is dated 7 May 1996.; The headnote prints section 2(43), but the judicial body at physical page 4 expressly invokes clause (23) of section 2. The note uses section 2(23).; The Court says section 189(3) is not attracted on the facts. It must not be presented as the operative statutory basis of the respondent's liability.; Demand notice service was presumed because no non-service contention was raised; there is no finding based on an examined service record and no holding abolishing notice requirements.; The prior Sahu Rajeshwar Nath proceedings involved the 1922 Act and an unregistered firm; those attributes are not silently imported into the present assessee's record.; Section 188-A is quoted as effective from 1 April 1989; the Court expressly applies the earlier scheme to the present dispute. No present statutory text or 2025 equivalent has been independently verified.; The source states no amount of arrears. Counsel labels in the report front matter differ from the judicial body's explanation of amicus assistance; no representation inference is necessary to this note.

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: 11](#)

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