

B.M. Malani v. Commissioner of Income Tax & Anr.

Civil Appeal No. 5950 of 2008

[2008] 14 SCR 63 | 2008-10-01

Whether refusal to reduce or waive section 220(2) interest under section 220(2A) properly considered genuine hardship and circumstances beyond the taxpayer's control, including the unaddressed request to sell seized securities.

220(2) | 220(2A) | 132(4) | 132(4A) | 245C(1) | 226(3) (distinguished context)

2-judge bench | S.B. Sinha, J. | Cyriac Joseph, J.

Assessment years: 1990-91, 1991-92, 1992-93, 1995-96

Reconsideration ordered, not an interest waiver

The Court required a fresh section 220(2A) decision applying all three conditions. Substantial assets do not automatically negate genuine hardship, but seizure or a sale request does not itself extinguish interest. The company-named draft was treated separately. No waiver amount or automatic adjustment date was ordered. Source payment totals, year/date recitals and some wording conflict; current law and comprehensive later treatment remain unverified.

01 FACTS OF THE CASE

A 1994 search of the taxpayer, who carried on money lending and securities trading, seized shares/securities and a company-named demand draft. In a written December 1994 request he asked the Department to sell the seized investments promptly and apply proceeds to taxes, saying he lacked other funds. The request was not acted on. A later Settlement Commission order determined income, and interest was charged for delayed payment, ultimately rectified from Rs 31,41,106 to Rs 24,36,352 for the identified years (paragraphs 3–4).

The Commissioner refused the waiver request, placing weight on asset ownership and financial resources; cooperation with the Department was accepted. The High Court upheld refusal and did not properly examine the beyond-control condition once it rejected hardship. The taxpayer appealed. His treatment of the demand draft differed: it stood in a company's name and he had not asked for its encashment (paragraphs 3–7 and 9).

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

02 DISCUSSION BY THE HON'BLE COURT

The three statutory requirements were cumulative: genuine hardship, default caused by circumstances beyond the assessee's control, and cooperation in assessment or recovery. The Commissioner retained discretion, but it had to be exercised judiciously within the statute. Genuine hardship meant real difficulty; ownership of substantial assets did not automatically prove the absence of such difficulty (paragraphs 5 and 8).

The Court required attention to the unaddressed voluntary request to realise the seized securities. The Department could not remain silent and then ignore the consequences in considering hardship and control. It did not, however, finally hold that an immediate sale was legally permissible regardless of statutory restrictions: that issue had not been examined. Nor did its discussion of unjust dues declare every interest demand unjust (paragraph 8).

The same contention was unavailable for the company-named demand draft because there had been no request for encashment and the taxpayer did not own it in law. The section 132(4A) ownership presumption was rebuttable. The Court therefore distinguished the particular assets rather than treating all seized property as cash already paid in discharge of tax (paragraph 9).

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

03 JUDICIAL DECISION

The High Court judgment was set aside and the waiver matter remitted to the Commissioner for fresh consideration. The appeal was allowed to that extent without costs. The Supreme Court did not itself waive the interest, determine a percentage reduction, award compensation for delayed sale or pronounce on the later remand result (paragraphs 10–11).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee procedurally, obtaining reconsideration

Appeal allowed to the stated extent; matter remitted to Commissioner; no costs

Final on inadequacy of the refusal's consideration; statutory waiver or reduction remained for fresh decision

All three statutory requirements remain necessary. Asset ownership neither conclusively negates hardship nor automatically establishes it. No automatic adjustment date, interest cessation or final waiver follows merely from seizure.

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

05 AKHB REVIEW POINT

A hardship application needs evidence of liquidity, the actual cause of payment default, cooperation and the treatment of available or seized assets. Retain written requests and the authority's responses; do not rely only on a balance-sheet asset figure or a general claim of difficulty. Separate a voluntary request that the authority could lawfully consider from an assumption that every seized instrument is immediately usable for another person's tax.

The useful remedy here is reconsideration through the statutory criteria. Report that outcome accurately rather than quoting the hardship language as an unconditional waiver. Source arithmetic and date inconsistencies do not justify inventing a revised interest calculation; present statutory time limits and later law require separate checks.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and waiver challenge

Source url: [Open cited source](#)

Pdf pages: 1; 5

Paragraphs: Cover; jurisdiction; 1–3

Source role: reported metadata and judicial text

2.

Topic: Seizure, request, attributed refusal and monetary tables

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7; 8; 9; 10

Paragraphs: 3–4

Source role: judicial text

3.

Topic: Cumulative conditions, hardship and lawful discretion

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13

Paragraphs: 5–8

Source role: judicial text

4.

Topic: Securities request versus company-named draft

Source url: [Open cited source](#)

Pdf pages: 13; 14

Paragraphs: 8–9

Source role: judicial text

5.

Topic: Fresh consideration, limited allowance and no costs

Source url: [Open cited source](#)

Pdf pages: 14

Paragraphs: 10–11

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.B. Sinha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 14 PDF pages; SHA-256

54e57431a2149cb45ddab41c047172e7c3d1da6c01f8c23efac7e0d12715b18c. Original bytes preserved.

Complete judicial paragraphs 1–11 on physical pages 5–14/SCR 67–76, including tables and attributed Commissioner/High Court reasoning. Earlier headnote excluded; no adjacent judgment.

[Open cited source rendition](#)

The final rectified interest discussion identifies four years. Earlier source narration says 1990-91 to 1995-96, and wider assessment tables include another year with an 1988-89/1989-90 conflict; those are not silently merged into the interest dispute.

The final rectified interest discussion identifies four years. Earlier source narration says 1990-91 to 1995-96, and wider assessment tables include another year with an 1988-89/1989-90 conflict; those are not silently merged into the interest dispute.; The payment table on physical page 6 visibly lists Rs 50,000 for one entry, so its components total Rs 35.50 lakh while the printed total and narrative say Rs 40 lakh. No corrected payment or interest amount is inferred.; Paragraph 4 refers to an added AY 1989-90 while its table says 1988-89; the same table-year is retained as a disclosed source conflict.; The final recovery table is headed 8 March 2000, whereas the surrounding narration says 8 March 2002. Tax-demand amounts also vary by Rs 21 between tables. No corrected due date or total is certified.; The initial Commissioner-summary wording says the default was due to circumstances beyond control, while the subsequent discussion records the condition as not properly examined. The operative remand, not a guessed missing word, controls.; The headnote's statement that the authority could have kept silent conflicts with judicial paragraph 8, which says it could not. The judicial text is followed.

STATUTORY SCOPE

Current statutory equivalence and 2025 Act applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment has not been verified. Only the expressly identified bounded comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 14](#)

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