

The Commissioner of Income-tax, Bombay City I v. M/s. Jagannath Kissonlal, Bombay

Civil Appeal No. 358 of 1958 — Single Supreme Court civil appeal disposed of by the target judgment.

[1961] 2 SCR 644 | 1960-11-24

Loss from paying an insolvent co-borrower's share was deductible where reciprocal joint borrowing was an established commercial practice used to finance the assessee's own business.

1922 Act: 10 | 1922 Act: 10(2)(xv)

3 Judges | J. L. Kapur | M. Hidayatullah | J. C. Shah

01 FACTS OF THE CASE

A Bombay commission-agent firm borrowed Rs. 1 lakh jointly with Kishorilal from the Bank of India and used half for its business. Both were jointly and severally liable. Kishorilal became bankrupt, leaving the firm to repay the entire borrowing with interest. After a partial insolvency recovery, it claimed the remaining loss for assessment year 1951-52. The lower tax authorities refused the claim, but the Tribunal allowed it as business expenditure and business loss. The High Court answered both referred questions in the firm's favour.

Source: [SCR 645-646; facts and procedural record](#)

02 DISCUSSION BY THE HON'BLE COURT

The agreed statement established a commercial practice of borrowing on joint and several liability and obtaining funds at a lower interest rate than on individual security. Revenue could not reopen that factual foundation in the appeal. Mutual accommodation connected the co-borrower exposure with financing the firm's own operations. The Court distinguished Madan Gopal Bagla, where the asserted custom lacked proof of that reciprocal element, and treated the case as analogous to the established joint-pronote practice in Ramaswamy Chettiar. Being a commission agent rather than a money-lender did not defeat the claim on the findings actually made. The Court also distinguished financing expenditure held separate from income-earning activity under another statute and rejected the attempt to label this loss capital merely by quoting a distinguishable decision.

Source: [SCR 646-651; judicial reasoning; opinion boundaries preserved](#)

03 JUDICIAL DECISION

Given the proved custom, business use and mutual accommodation, the loss arose from a transaction in the course of, and incidental to, the assessee's business. The firm was entitled to deduct it in computing business profits. The Court upheld the High Court's favourable answers to both the section 10(2)(xv) and business-loss questions, grounding its conclusion in the established facts rather than a general entitlement for all guarantees.

Source: [SCR 650-651; holding and expressed limits](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue's appeal dismissed. The allowance of the co-borrower default loss remained effective. Appeal dismissed with costs.

Source: [SCR 651-651; operative disposition and costs](#)

05 AKHB REVIEW POINT

Prove the reciprocal financing practice and its connection with the taxpayer's business. A voluntary guarantee for somebody else is not made a trading loss simply because the guarantor is a trader. Here 'mutuality' describes reciprocal accommodation in joint borrowing, not the separate tax doctrine for mutual associations. Keep expenditure, trading-loss and bad-debt routes distinct when applying a later statute; the historical judgment upheld the claim on its particular evidentiary foundation.

Source: [SCR 646-650; editorial analysis based on the indicated reasoning](#)

ORIGINATING PROCEEDINGS

1.

Case numbers: Income-tax Reference No. 55 of 1955

Relationship: Bombay High Court originating reference; judgment 8 March 1956

SOURCE & VERIFICATION

[Original reported Supreme Court judgment](#)

8-page retained public-mirror SCR report. The complete report was read as text and page images. The acquisition URL is preserved provenance; current endpoint availability and authentication as a signed original are not newly verified. All 8 pages/SCR644-651. Target judgment p 2-8 ends above dividing rule on p 8; separate Haji Aziz caption/headnote below rule excluded. Joint borrowing/custom/mutual accommodation findings and earlier cases distinguished fully read.

[Open cited source rendition](#)

p 2 prints Rs. 18,805 recovered and Rs. 31,740 claimed after the Rs. 50,000 co-borrower allocation; repayment is said to include interest, but no reconciliation is supplied. The note does not reconstruct the amount.

Haji Aziz begins below the p 8 dividing rule and is separately reviewed.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10, 10(2)(xv)

The official 1961 Act page displayed year 2025. Section 37(1) supplies a general business-expenditure test subject to its exclusions. This comparison concerns the expenditure route only; it does not establish that a co-borrower default loss satisfies a later trading-loss or bad-debt provision.

The official 2025 Act page displayed year 2026. Section 34(1) supplies the general expenditure framework, with the exclusions in 34(2)-(3). The historical proof of reciprocal business financing remains factually relevant, but no 2025 trading-loss or bad-debt provision was verified here and no automatic allowance is asserted.

The operative historical law is identified separately. Only the stated later statutory versions and passages were checked; comprehensive subsequent history and applicability to a particular later tax year remain unverified.

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment is adopted except where expressly stated.

No later primary decision applying this precise reciprocal-borrowing custom has yet been verified. Earlier authorities analyzed within the judgment are not evidence of subsequent treatment.

Earlier authorities discussed within the target judgment are not treated as later-use evidence.

IDENTIFIED SOURCE LINKS

[Income-tax Act,1961,section 37](#)

Official departmental page displayed 2025 Header/version; complete substantive sectionlines 63-95 Exact retained passages personally read; no raw officialHTML/PDF, image or whole-Act verification claimed.

[Income-tax Act,2025,section 34](#)

Official departmental page displayed 2026 Header/version; complete sectionlines 63-73 Exact retained passages personally read; no raw officialHTML/PDF, image or whole-Act verification claimed.

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