

The Commissioner of Income-tax, Bombay v. Dharamdas Hargovindas

Civil Appeal No. 240 of 1955 — Supreme Court special-leave appeal / Income-tax Reference No. 15 of 1953 — Bombay High Court originating reference

[1961] 3 SCR 731 | 1961-02-03

Previously accumulated foreign income brought into Bombay was taxable under the special old-Act remittance clause; the judges agreed on liability but differed on whether it was also a fresh receipt.

1922 Act: 3 | 1922 Act: 4(1)(a) | 1922 Act: 4(1)(b)(iii)

3 Judges | P. B. Gajendragadkar | A. K. Sarkar | K. N. Wanchoo

01 FACTS OF THE CASE

The Bombay-resident assessee and his brother had accumulated profits deposited with a concern in Bhavnagar, then outside British India. Using authority over that concern's Bombay bank account, the assessee drew a cheque in Bombay and delivered it to a Bombay mill, which credited the proceeds under their benami names. The Bhavnagar concern later debited their deposit. The assessee's half share was ₹50,000. The High Court treated the arrangement as substitution of one debtor for another. A supplementary Tribunal statement established that the relevant transactions had occurred in Bombay.

Source: [SCR732-735: earlier remand and supplementary cheque findings.](#)

02 DISCUSSION BY THE HON'BLE COURT

Wanchoo J, with Gajendragadkar J, distinguished the ordinary receipt provision from section 4(1)(b)(iii). That special clause reached residents' income accrued outside the taxable territories before the previous year, but after 1 April 1933, and subsequently brought into or received in the territories. Restricting "received" there to the first receipt would defeat the clause's particular function. Drawing and applying the cheque in Bombay constituted receipt by the assessee, despite the indirect route. The majority left unnecessary the separate construction of "brought into ... by him".

Source: [SCR736-741: majority construction and receipt finding.](#)

03 JUDICIAL DECISION

Sarkar J concurred in allowing the appeal but rejected a second receipt of the same income. He instead held that the assessee brought his accumulated income into Bombay: its change from a deposit debt to a cheque and a new debt did not prevent remittance. Thus the result was unanimous, while the two-judge opinion controlled the disputed receipt interpretation.

Source: [SCR741 majority result;742-746 Sarkar concurrence.](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue appeal allowed; High Court order set aside. The question was answered affirmatively and ₹50,000 was taxable under section 4(1)(b)(iii). Revenue awarded costs in the Supreme Court and court below.

Source: [SCR741 bottom and 746 top: allowance, answer and costs.](#)

05 AKHB REVIEW POINT

Preserve the separate judicial reasons and the special historical remittance clause. The case does not establish that moving already received overseas savings into India always creates taxable income. Modern total-income provisions and the relevant residence and accrual facts must be considered independently.

Source: [SCR737-738 and 743-746: distinct first-receipt and remittance rationales.](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

16-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 16 physical text/image pages SCR731-746. Target caption/headnote physical 1; Wanchoo for himself/Gajendragadkar starts physical 2 SCR732 upper third and ends physical 11 SCR741 bottom, appeal allowed costs here/below. Sarkar separate concurrence physical 12 SCR742 top through physical 16 SCR746 upper quarter. No neighboring text. Receipt construction differs but result unanimous. Printed opinion reference 60(2) on 732 and Sarkar concluding 4(1)(a), (b)(iii) on 746 retained as source wording; operative analysis is 4(1)(b)(iii).

Open cited source rendition

SCR 732 prints reference under 60(2); the note describes the reference without silently correcting that printed citation. Sarkar's closing sentence prints 4(1)(a), (b)(iii), while his reasoning expressly rests on bringing in under 4(1)(b)(iii).

STATUTORY SCOPE

Indian Income-tax Act, 1922; 3, 4(1)(a), 4(1)(b)(iii)

Section 5 in the 2011 compilation distinguishes resident and non-resident total income and contains two Explanations, including avoidance of duplicate inclusion. It does not reproduce the old 4(1)(b)(iii) charge for later remittance of earlier accumulated foreign income. This is not a complete residence analysis.

2025 section 5(1)-(4) likewise states receipt/accrual rules and prevents repeat inclusion of income already included on accrual. The special old remittance holding cannot be transplanted merely because the money later enters India.

The holding applies the historical 1922 Act. The 2025 Act generally commences 1 April 2026; selected 536(1), (2)(a)-(e), (3)-(4) preserve earlier operation and specified proceedings. Only identified versions/passages were checked; no complete savings, amendment-history or present-case applicability assessment is claimed.

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment is adopted; this is not a finding that later treatment is absent.

Comprehensive subsequent history and present-law applicability remain unverified.

Primary authorities cited within this judgment are not later-use evidence.

IDENTIFIED SOURCE LINKS

[Income-tax Act, 1961: 5 in 2011 compilation](#)

Displayed 2011; retained DOR-hosted Taxmann compilation Physical 72-73/printed 1.31-1.32, 5(1), (2), both Explanations, notes 47-51 and asterisk. Only listed 2011 compilation passages/images read. Footnotes are compilation annotations, not independently verified amending Acts. No fresh endpoint retrieval or current 1961 consolidation claim. Text pages read: 2, 72-73. Image pages read: 2, 72-73.

[Income-tax Act, 2025: 5](#)

As amended by Finance Act, 2026 Web 1057-1082, complete 5(1)-(4). Exact stated web text personally read, including cross-page continuations. No original HTML/PDF or images, whole-Act or automatic case-applicability claim.

[Income-tax Act, 2025: commencement and selected savings](#)

As amended by Finance Act, 2026 1(1)-(3) web 0-13; 536(1), (2) intro/(a)-(e) web 24385-24408; 536(3)-(4) 24597-24601. Not full 536. Exact stated web text personally read, including cross-page continuations. No original HTML/PDF or images, whole-Act or automatic case-applicability claim.

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