

M/s. Killick Nixon & Company v. Commissioner of Income-tax, Bombay

Civil Appeals Nos. 1919 and 1920 of 1966

[1967] 3 SCR 971 | 1967-05-05

Historical capital-gains procedure and business-discontinuance relief: the Tribunal had to evaluate all valuation evidence under section 33(4), but capital gains not arising from trading activity did not qualify for section 25(3) exemption.

Indian Income-tax Act, 1922: sections 2(6C), 6, 12B(1), 12B(2) third proviso, 25(3), 25(4), 33(4) and 66

3-judge bench; unanimous judgment delivered by J. C. Shah, J. | J. C. Shah, J. | S. M. Sikri, J. | V. Ramaswami, J.

Assessment years: 1949-50

The result was mixed

Revenue lost its cross-appeal on the Tribunal's failure to examine valuation evidence, while the assessee lost its section 25(3) exemption appeal. Both appeals were dismissed; the judgment should not be described as an unqualified victory for either side.

Evidence duty did not shift the onus

The assessee still bore the burden of proving 1 January 1939 fair market value. The error was the Tribunal's bare conclusion without considering the record and arguments, not any acceptance of the assessee's proposed valuation.

No final valuation or tax amount was fixed

The Court preserved the High Court's affirmative answer on misdirection but did not calculate the three assets' 1939 value or the final taxable capital gain. The report's printed intermediate figures also do not arithmetically reconcile, so they are reproduced only as procedural history.

Questions 2 and 3 were not pursued

The assessee did not challenge the High Court's answers on liability to capital gains or the application of section 12B in the Supreme Court. The judgment therefore adds no fresh merits reasoning on those abandoned challenges.

An express question remained open

The Court did not decide whether section 25(3) could exempt a receipt that had not been chargeable as income under the 1918 Act. It decided only that these capital gains were not income earned from the trading activity and therefore did not qualify.

Catalogue understates the cross-appeals

The catalogue lists Civil Appeal No. 1919 of 1966, while the signed report identifies Civil Appeals Nos. 1919 and 1920 of 1966, one by each side. The note follows the report.

01 FACTS OF THE CASE

Killick Nixon & Company, a Bombay firm with diverse trading activities, transferred managing agencies, shares, debentures, debts and other assets to Killick Industries Ltd. under a 28 November 1947 agreement, principally for shares, and transferred goodwill, premises, plant, stock, securities, agencies and other assets to Killick Nixon & Co. Ltd. under a 29 January 1948 agreement, again principally for shares. It dissolved and discontinued business from 1 February 1948. For assessment year 1949-50 the officer assessed capital gains at Rs.32,01,747. The first appellate authority printed capital gains of Rs.25,40,737, capital loss of Rs.4,00,530 on three assets and a taxable figure of Rs.21,06,455; those three figures do not arithmetically reconcile. The Tribunal confirmed and rejected section 25(3)/(4) relief. On four referred questions the Bombay High Court ruled against the assessee on section 25(3), section 12B and capital-gains liability, but held for it that the Tribunal had misdirected itself on valuation evidence. The parties filed cross-appeals (SCR pp.972-974; PDF pp.2-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

On Revenue's appeal, the Court distinguished the first and third provisos to section 12B(2). The transfer-date market value was undisputed; the issue was the assessee's optional 1 January 1939 value for managing agencies, 240 Cement Agencies Ltd. shares and goodwill. Although the assessee carried the evidential burden, the Tribunal as final fact authority had to consider the whole record and arguments under section 33(4). Its bare statement that the value could not exceed the appellate estimate, without engaging the evidence or giving supporting reasons, was a legal misdirection; the High Court's answer on question 4 was correct (SCR pp.974-977; PDF pp.4-7). On the assessee's appeal, only section 25(3) remained pressed. The Court accepted that the relief was not mechanically confined to the business-income head, but it still applied only to income earned by carrying on the discontinued business. Capital gains were income under section 2(6C) and taxable under sections 6 and 12B, yet the statutory fiction did not turn them into profits of the business. As these gains did not arise from trading activity, section 25(3) did not exempt them (SCR pp.978-980; PDF pp.8-10).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court upheld both relevant High Court conclusions: the Tribunal had to reconsider the valuation evidence in accordance with section 12B(2) and section 33(4), while section 25(3) did not exempt the capital gains. It dismissed both cross-appeals with costs (SCR p.980; PDF p.10).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

Mixed. The assessee succeeded on the valuation-procedure issue but failed on the discontinued-business exemption; Revenue succeeded on section 25(3) but failed to restore the Tribunal's unsupported valuation treatment. Neither side obtained reversal, and both appeals were dismissed (SCR pp.977-980; PDF pp.7-10).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: keep computation procedure separate from substantive exemption. A taxpayer exercising a historical valuation option carried the proof burden, but the final fact-finder still had to address material evidence and give intelligible reasons. Separately, a receipt's inclusion in statutory 'income' did not establish that it was earned by carrying on the discontinued business. For current matters, identify the applicable valuation date and evidence, the precise source character of the receipt, and the modern closure/succession provisions rather than importing section 25(3)'s historical scheme (based on SCR pp.974-980; PDF pp.4-10).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

Full 10-page SCR report read and checked. The editorial headnote and adjacent-report boundary text were distinguished from the judicial opinion and operative order.

[Open cited source rendition](#)

Exact source bytes, SHA-256 and 10-page count match catalogue asset 1967_3_971_980; every page was reviewed.

The source verifies Civil Appeals Nos. 1919 and 1920 of 1966, the stated bench, issues, reasoning and operative result.

No published or archived standalone AKHB note with this source hash, case identity and operative decision was found.

STATUTORY SCOPE

The decision concerns capital gains, discontinued-business relief and appellate procedure under the repealed Indian Income-tax Act, 1922, including a 1 January 1939 fair-market-value option and the separate 1918 Act assessment history required by section 25(3). It does not determine present computation, grandfathering, succession, closure or appellate consequences under the Income-tax Act, 1961. No current-law or later-treatment clearance was undertaken.

LATER TREATMENT

Source checked 2026-10-11. Later judicial treatment and current statutory applicability have not been comprehensively checked; no current-law or citator clearance is represented.

AI DISCLOSURE

This AKHB research note was prepared with AI assistance from the identified primary report and has not been represented as independently human-reviewed.

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General legal and tax research only; not legal or tax advice. Verify the original judgment, the governing historical statutes and subsequent judicial treatment before reliance. The AKHB REVIEW POINT is editorial analysis, not the Court's holding, and no current-law clearance is claimed.