

Durga Das Khanna v. Commissioner of Income-tax, Calcutta

Civil Appeal No. 873 of 1966

[1969] 3 SCR 462 | 1969-01-30

Historical capital-versus-revenue treatment of a cinema lease contribution: a non-recurring Rs.55,200 lump sum paid towards construction, with no lease term adjusting it against rent or requiring repayment, was a capital premium rather than advance rent.

Indian Income-tax Act, 1922 (capital-versus-revenue receipt in assessment year 1947-48) | Transfer of Property Act, 1882: section 105 (premium and rent distinction discussed)

3-judge bench; unanimous judgment delivered by A. N. Grover, J. | J. C. Shah, J. | V. Ramaswami, J. | A. N. Grover, J.

Assessment years: 1947-48

No automatic rule for every premium

The Court said expressly that whether a premium is capital or revenue cannot be decided as a pure question of law and depends on the facts and circumstances of each case.

Lease terms and evidence controlled

The decisive record contained no adjustment of the Rs.55,200 against rent, no repayment obligation and no evidence that Rs.2,100 monthly rent was artificially low.

Construction contribution was non-recurring

The lump sum funded completion of the cinema to the lessees' requirements and was paid before possession; that setting supported capital treatment, not a universal rule for tenant-funded works.

Historical statutory setting

The appeal arose under the 1922 Act for 1947-48. The report does not clear the result under later statutory provisions, modern lease documentation or subsequent authorities.

01 FACTS OF THE CASE

Durga Das Khanna leased premises at 157 Upper Circular Road, Calcutta for 99 years at Rs.750 per month, spent Rs.35,000 altering them for a cinema and then lacked funds to complete it. By a 23 February 1946 sublease for 30 years, Nani Gopal Dutt, Makhan Lal Dutt and Shiv Kumar Khanna agreed to pay Rs.55,200 towards completing the cinema to their requirements and to pay Rs.2,100 monthly rent from 1 June 1946. The lessees entered possession after completion. For assessment year 1947-48 the Income-tax Officer, first appellate authority, Tribunal and Calcutta High Court treated the lump sum as advance rent and taxable income, while the assessee maintained that it was a capital receipt or salami (SCR pp.463-465; PDF pp.2-4).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

The lease contained no term treating the construction contribution as rent, adjusting it against rent or requiring repayment. The commercial arrangement was that the lessees wanted a completed cinema and supplied a lump sum because the lessor lacked sufficient completion funds. The Tribunal and High Court had no evidentiary foundation for assuming that the true rent was Rs.2,250 rather than the agreed Rs.2,100 per month (SCR pp.465-466; PDF pp.4-5). A premium's character is fact-specific, but prima facie salami is not income and Revenue must establish facts making it revenue. Here rent commenced later than the lease, possession followed completion, the payment was single and non-recurring, and the agreed rent was not shown to be ridiculously low. Those features made the Rs.55,200 a capital payment (SCR pp.466-467; PDF pp.5-6).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court held that the referred question should have been answered in the negative and for the assessee: the Rs.55,200 was capital, not advance rent or a taxable revenue receipt. It discharged the High Court's answer and allowed the appeal with costs in both courts (SCR p.467; PDF p.6).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Durga Das Khanna/the assessee. The one-time cinema-construction contribution was held to be a capital receipt on the proved lease terms and circumstances (SCR pp.466-467; PDF pp.5-6).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: for a lease-related lump sum, test the document and cash flow rather than the label. Record whether it is adjustable against periodic rent, repayable, recurring, linked to a transfer of an enduring leasehold advantage, or economically substitutes for suppressed rent; also verify possession and construction chronology and comparative rental evidence. Re-run that analysis under the governing current statute and accounting framework because this 1947-48 decision supplies no present-law clearance (based on SCR pp.465-467; PDF pp.4-6).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

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

Full 6-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 6-page count match catalogue asset 1969_3_462_467; every page was reviewed.

The source verifies Civil Appeal No. 873 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 judgment concerns assessment year 1947-48 under the Indian Income-tax Act, 1922 and applies a fact-specific distinction between a lease premium or salami and recurring rent. It does not determine the treatment of a modern lease incentive, deposit, contribution or transfer under later income-tax, indirect-tax or accounting rules. 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 statute 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.