

Commissioner of Income-tax, Calcutta, now West Bengal III v. Imperial Chemical Industries (India) Private Ltd.

Civil Appeals Nos. 1549-1552 of 1968

[1969] 3 SCR 804 | 1969-02-20

Former selling-agent compensation: a High Court on reference could not displace the Tribunal's unchallenged factual finding that the alleged commission agreement was unproved; the payments were neither established business expenditure nor income diverted by overriding title.

Indian Income-tax Act, 1922: sections 3, 10(2)(xv), 66(1) and 66(2)

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

Assessment years: 1949-50, 1950-51, 1951-52, 1952-53

Tribunal fact finding controlled

The Tribunal found that no alleged commission agreement was proved and, if one existed, it had not been acted upon. Because the assessee did not secure a reference on the validity of that factual finding, the High Court could not reappraise the evidence in the referred inclusion question.

No broad ban on compensation deductions

Deduction failed on this record because the exact agreement and the assessee's obligation were not proved. The Court did not hold that every payment connected with terminating a former agent is non-deductible.

Diversion distinguished from application

The governing test was whether an overriding obligation kept the amount from ever reaching the assessee as income. An obligation applied after accrual or receipt is only application of income; here the documents instead indicated the principal's liability.

Source boundary

The nine-page PDF begins with this case's headnote and ends with its costs order; no adjacent-report text was treated as part of the judgment.

01 FACTS OF THE CASE

The assessee, an Indian subsidiary in the ICI group, became sole Indian selling agent for ICI (Export) Ltd. from 1 April 1948 after four former agents were terminated. ICI (Export) agreed to compensate those former agents, and payments passed through the assessee's accounts over three years. For AYs 1949-50 to 1952-53 the assessee returned only net commission after transferring amounts to an ex-agents compensation reserve. The Income-tax Officer disallowed the reductions; the Appellate Assistant Commissioner and Tribunal agreed. The Tribunal found no proved agreement obliging the assessee to pay compensation out of its commission and added that any such agreement had not been acted upon. The Calcutta High Court nevertheless reappraised the material and answered the referred inclusion question for the assessee (SCR pp.806-809; PDF pp.3-6).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court reaffirmed that a High Court under section 66(1) was not an appellate fact-finder. A perverse or unsupported finding could be challenged only through a specifically sought reference; here the Tribunal had rejected the requested factual question and the assessee had not moved under section 66(2), so the Tribunal's finding controlled (SCR pp.808-810; PDF pp.5-7). Without proof of the agreement's exact terms, the payments could not be accepted as expenditure laid out wholly and exclusively for business under section 10(2)(xv) (SCR p.810; PDF p.7). Nor did overriding title divert the commission before accrual: the available documents indicated that compensation was the principal's liability and showed no legal obligation that prevented the commission becoming the assessee's income. The Court distinguished diversion at source from later application of income and applied the test whether the amount truly never reached the assessee as income (SCR pp.810-812; PDF pp.7-9).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court set aside the Calcutta High Court's judgment, answered the referred inclusion question in the affirmative and against the assessee, and allowed the four appeals with costs and one hearing fee (SCR p.812; PDF p.9).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the Commissioner/Revenue. The compensation amounts of Rs.2,03,503, Rs.5,41,526, Rs.5,29,284 and Rs.4,00,052 remained included in the assessee's total income for the four assessment years on the record and question before the Court (SCR pp.808, 812; PDF pp.5, 9).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: when an assessee says a receipt was reduced before it became income, document the governing contract, the person legally liable, the accounting entries and the point of accrual. Keep a business-expense claim distinct from diversion by overriding title. In a reference proceeding, also identify whether the factual premise was separately challenged through the prescribed route before trying to recast it as part of a broader legal question (based on SCR pp.808-812; PDF pp.5-9).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION**Supreme Court Reports scan - public eSCR mirror**

Full 9-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 9-page count match catalogue asset 1969_3_804_812; every page was reviewed.

The source verifies Civil Appeals Nos. 1549-1552 of 1968, 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 ruling applies section 10(2)(xv) and section 66 procedure under the repealed Indian Income-tax Act, 1922. Its procedural setting and deduction provision should not be equated with later appellate or business-expenditure provisions without independent verification. 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.

PROFESSIONAL DISCLAIMER

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.