

Commissioner of Income Tax, Gujarat v. M/s. S. C. Kothari

Civil Appeal No. 1993 of 1968 — Supreme Court appeal by defective certificate, dismissed in this judgment and connected proceedings (full list below)

[1972] 1 SCR 950 | 1971-10-05

Illegal-contract loss was not available for section 24 set-off; possible deduction in computing the same business's profits required a further finding.

1922 Act: 10(1) | 1922 Act: 10(2) | 1922 Act: 24(1), first proviso and Explanations 1-2

2 Judges | K. S. Hegde | A. N. Grover

Scope of this decision

Conditional 1922 same-business computation holding, materially limited for penalty/confiscation by later judicial discussion.

01 FACTS OF THE CASE

The Court rejected statutory set-off for the illegal contracts but remitted the separate same-business computation question. The registered commission-agency and trading firm claimed a ₹3,40,443 loss from groundnut-oil forward transactions in assessment year 1958-59, against speculative profits of ₹2,19,046. The ₹1,21,397 balance was separately in issue. Four questions reached the Gujarat High Court: contractual illegality, relief despite illegality, speculative character, and set-off of the balance against other income. The High Court did not answer the first, allowed limited relief on the second, and answered the third affirmatively and fourth negatively. Only the Revenue appealed.

Source: [SCR952-954 and 958: facts, four questions and numerical roles](#).

02 DISCUSSION BY THE HON'BLE COURT

Grover J held that the admitted breach of section 15(4) of the Forward Contracts (Regulation) Act, 1952, made the contracts illegal and unenforceable. The Court then separated profit computation under section 10(1) of the 1922 Act from set-off under section 24. Ordinary commercial principles required actual business losses to be considered in arriving at taxable profits, provided the loss arose directly from that business and no express or implied statutory prohibition applied. Penalties for infraction of law and expenditure on illegal purposes stood differently. For section 24's speculative-transaction route, however, the contract had to be enforceable; the tainted contracts failed that requirement. The High Court had not clearly found that the profit-making and loss-making transactions belonged to the same business. Its assumption that either one-business computation or separate-business set-off produced the same result was therefore insufficient.

Source: [SCR954-960: illegality, computation and set-off distinction](#).

03 JUDICIAL DECISION

Question 1 was answered against the assessee. Question 2 returned to the High Court for a same-business determination, with a supplementary statement if necessary. Questions 3 and 4 were not reopened on an assessee appeal. The special-leave appeal 1173/1971 was disposed of accordingly; the defective-certificate appeal 1993/1968 was dismissed.

Source: [SCR959G-960: missing same-business finding and separate appeal outcomes.](#)

04 OUTCOME / IN WHOSE FAVOUR

Same-business issue remitted in the special-leave appeal; certificate appeal dismissed; no order as to costs. No unconditional allowance of the claimed loss or section 24 set-off was granted.

Source: [SCR960C-D: remand route, certificate dismissal and no costs.](#)

05 AKHB REVIEW POINT

Keep computation and cross-business set-off distinct. This is not permission to deduct every unlawful loss. In Prakash Chand Lunia (2023), Sundresh J's separate concurrence specifically limited Kothari for penalty/confiscation and stressed the later section 37 Explanation; Shah J used a narrower legitimate-business distinction. That treatment must accompany reliance on this 1922 holding.

Source: [SCR956-960: limited commercial-loss doctrine; later-use source separately recorded.](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 1993 of 1968 — Supreme Court appeal by defective certificate, dismissed in this judgment / Civil Appeal No. 1173 of 1971 — Supreme Court appeal by special leave, disposed of with remand in this judgment / Income-tax Reference No. 18 of 1966 — Originating High Court appeal/reference docket; not an additional Supreme Court appeal

SOURCE & VERIFICATION

Original reported Supreme Court judgment

11-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 11 physical texts/images SCR950-960. Full headnote and Grover judgment, SC1993/1968 defective-certificate appeal dismissed, 1173/1971 special-leave appeal disposed by remand question 2; HC ITR18/1966. Contracts illegal; s24 setoff rejected; same-business finding under s10(1) remitted. Questions 3/4 not appealed by assessee; printed double-negative final sentence and editorial Appeal partly allowed preserved separately from operative order. No costs; no adjacent text.

Open cited source rendition

SCR 960 final sentence about questions 3/4 contains an awkward double negative; their nonappeal posture is preserved without rewriting it into a fresh reversal.

Editorial ending says Appeal partly allowed; operative text separately disposes of 1173/1971 and dismisses 1993/1968.

Headnote compresses the reference into three questions; judgment SCR 953 contains four, which control this note.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10(1), 10(2), 24(1), first proviso and Explanations 1-2

Whole 28 and 37, displayed 2025, read:28 Explanation 2 separates a speculation business, while 37 Explanation 1 excludes expenditure for offences/prohibited purposes, with further explanations. Complete modern speculative-transaction and loss-set-off regimes were not reviewed; the 1922 section 24 reasoning is not mechanically mapped.

Whole 26-27 in FA 2026 text and 34, displayed 2026, read:26(3) separates speculation business; 34(2)(a)/(3) expressly restricts prohibited-purpose expenditure. No full modern loss-set-off regime or automatic deduction of an illegal-contract loss is certified.

The operative historical law remains the basis of the holding. Section 1(3) commences the 2025 Act on 1 April 2026, subject to contrary provision; selected 536 savings preserve earlier operations, liabilities and proceedings. Only exact stated versions/bounds were read, not all savings, amendments, rules or applicable facts. No automatic precedent carryover.

Other provisions addressed: Forward Contracts (Regulation) Act,1952,15(4),20(e); Indian Contract Act,1872,23

LATER TREATMENT

Source checked 2026-10-08. Prakash Chand Lunia(24 April 2023): Sundresh J's separate concurrence at paragraphs 21.1-21.3, physical 33-34/SCR 117-118, questions the generality of Kothari, excludes penalty/confiscation application and notes the later section 37 Explanation. Shah J's checked paragraphs 6-8.1, physical 14-16/SCR 98-100, use the narrower legitimate-silver-business distinction without directly discussing Kothari. Both allow Revenue appeals without costs; the reasons are not merged. No blanket overruling of Kothari is asserted.

Comprehensive subsequent history and present-law applicability are not certified.

One bounded later use verified on 11 selected pages, with complete targeted paragraph 21 and opinion/disposition context; the intervening pages and full later history are unverified.

IDENTIFIED SOURCE LINKS

[Income-tax Act,1961: section 28](#)

Official HTML displayed 2025 Complete 28(i)-(vii), all provisos/explanations and annotations; HTML 38-136. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

[Income-tax Act,2025: sections 26-27](#)

As amended by Finance Act 2026 Complete 26(1)-(4) and 27, lines 2191-2255 including pagebreak lines 2193/2232, physical 55-57; cover 1(1)-(3) lines 0-13. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

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

Official HTML displayed 2025 Whole 37(1), Explanations 1-3,(2 B), omissions/annotation, HTML 38-95. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

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

Official HTML displayed 2026 Complete 34(1)-(3), HTML 38-73. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

Income-tax Act,2025: bounded commencement and savings

As amended by Finance Act 2026 1(1)–(3), lines 0–13; 536(1),(2) opening and(a)–(e), lines 24385–24408 including FA 2026 amendment footnote; 536(3)–(4), lines 24597–24601. Not whole 536. Fresh personal bounded reading of retained official web-tool text. Capture hashes identify the saved rendition, not raw official HTML/PDF bytes. No source-image or whole-Act/current-applicability certification.

The Commissioner of Income Tax Jaipur v. Prakash Chand Lunia (D) through LRs & Another — [2023]7 SCR 85

Only selected physical pages 1,6,14–17,33–34,47–49 of 49 personally read in text/images: identity, Shah 6–8.1, separate-opinion opening, Sundresh 21.1–21.3 and 24–27. Intervening pages not adopted. Only 11 selected physical pages of 49 personally read in text/images with source hash before/after. Separate opinions preserved; existing primary ownership unchanged. No comprehensive subsequent-history certification. Exact previously retained CC-BY-4.0 public mirror of eSCR, reused from verified Site original; no fresh external retrieval or official signed-PDF claim in this check. Text pages read: 1, 6, 14–17, 33–34, 47–49. Image pages read: 1, 6, 14–17, 33–34, 47–49.

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