

I.C.I. (India) Private Ltd. v. Commissioner of Income-tax, West Bengal

Civil Appeal No. 1308 of 1970

[1972] 3 SCR 138 | 1972-01-20

Could the High Court compel a section 256 reference on four proposed questions when the Tribunal found, on the evidence, that transfers at par implemented a pre-existing investment arrangement and were not made to avoid or reduce capital-gains liability under original section 52?

52 (original connected-person/avoidance-object provision) | 45 (underlying capital-gains liability referenced in original section 52) | 256 (reference jurisdiction, including High Court direction after Tribunal refusal)

Two judges | A.N. Grover, J. | M.H. Beg, J.

Assessment years: 1962-63

Historical section 52 and limits of compulsory reference

This AY 1962-63 decision applies original section 52 and section 256. It sustains the supported finding that these share transfers lacked the required avoidance object; it grants no general exemption for connected-company transfers. No-evidence, perversity and omitted-material challenges remain possible, as Biju Patnaik illustrates. The headnote's 1959 capital-gains date conflicts with the judicial text's 1956 date, and the printed High Court docket chronology is anomalous. A historical government compilation records section 52's omission and the later section 256/260A transition; it is not current legislation or an authenticated amending Gazette. Original PDF unchanged. Comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

The assessee, an Indian wholly owned subsidiary of Imperial Chemical Industries Ltd. in the United Kingdom, held shares in Indian Explosives Ltd. (IEL), Alkali and Chemical Corporation of India (ACCI) and Atic Industries Private Ltd. (ATIC). The UK parent advanced sterling loans so that the assessee could subscribe for those shares, with an understanding that the shares could be transferred to the parent at par or issue price in satisfaction of the loans when required. The arrangement followed negotiations with the Government of India and Reserve Bank approval. The scheme was found to have evolved before the proposal to reintroduce capital-gains tax in November 1956 (physical pages 2-4/SCR 139 G-141 E).

The 1959 changes to taxation of intercorporate dividends made holding through the Indian subsidiary less attractive to the UK parent. In February 1961 it called for the share transfers; Reserve Bank approval followed, and the report dates the transfers March/April 1961. For the expressly identified AY 1962-63, the Income-tax Officer invoked original section 52 and assessed capital gains. The Appellate Assistant Commissioner reversed, and the Tribunal upheld that decision after examining the correspondence and other evidence for all three companies (physical pages 3-8/SCR 140-145).

The evidence included IEL negotiations and a November 1953 declaration of intention; subsequent loans and a 1958 rights issue; the December 1955 ACCI proposal; and ATIC loans with the same share-transfer understanding. The Tribunal recorded that Revenue accepted the relevant affidavit facts and disputed the inferences. Revenue sought a reference on six questions, of which four were pressed: construction of documents, alleged omission of essential evidence, perversity, and applicability of section 52. The Tribunal declined a reference on 28 July 1969. The High Court made the rule absolute after argument and directed a statement of case on those four questions without giving reasons (physical pages 5-9/SCR 142-146; opening at SCR 139 G-H).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court identified the ingredients of original section 52: a direct or indirect connection between transferor and acquirer, and reason to believe that the transfer was effected to avoid or reduce the transferor's capital-gains liability. The statutory text also required the Inspecting Assistant Commissioner's previous approval before fair market value replaced the consideration. Connection was admitted here; the disputed avoidance object required cogent factual material. Intention and object had to be found from the relevant evidence, rather than assumed from the relationship or the transfer price (physical pages 4-5/SCR 141 E-142 D).

The Tribunal had examined the circumstances of each investment and found a prior understanding that the UK parent could take over the shares at par. Its reasoning distinguished the object of the transaction from its later result. The lack of a formally enforceable agreement did not, on this record, establish a tax-avoidance purpose: the arrangement could explain the transfers even if its obligation were moral rather than legally enforceable. The Court did not declare all informal group arrangements exempt, or resolve beneficial ownership as an independent issue. It held that the matters stressed by Revenue did not displace the relevant factual conclusion (physical pages 6-8/SCR 143-145; page 11/SCR 148 B-D).

Neither the proposed document-construction question nor the omitted-evidence allegation supplied a real question of law. No disputed expression in any document was identified; the Tribunal explained that relevant materials had been considered although every document in four bulky volumes was not mentioned. Nor had the parties joined issue on the construction of section 52. The Supreme Court found the Tribunal's conclusions clear, precise, amply supported and reasonable, and rejected the suggested perversity (physical pages 8-10/SCR 145 F-147 B).

Adopting *Sree Meenakshi Mills*, the Court distinguished a pure legal question, a mixed question whose legal effect remains reviewable, and a factual finding attacked for absence of evidence or perversity. An inference from basic facts does not become a question of law merely because it is inferential. The Court expressly applied those principles to section 256. Neither the Tribunal nor the High Court could require a reference on pure fact, even when the amount was large. A reasoned order should have explained how the proposed legal questions arose. Once the supported pre-November 1956 scheme finding stood, the factual prerequisite for applying section 52 was absent (physical pages 10-11/SCR 147 B-148 D).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The assessee's Civil Appeal No. 1308 of 1970 was allowed, and the High Court order directing the four-question reference was set aside. The assessee was awarded its costs in the Supreme Court. No remand or costs award for the High Court was stated. The Tribunal's refusal to refer and its favourable section 52 conclusion stood; the Supreme Court did not quantify capital gains, decide a new beneficial-ownership dispute, or grant a general exemption for intra-group transfers (physical page 11/SCR 148 E, read with SCR 139 G-H and 147-148).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, I.C.I. (India) Private Ltd.

Appeal allowed; High Court compulsory-reference order set aside; costs in Supreme Court

Law-declaring application of original section 52 and section 256 jurisdiction; fact-based avoidance-object finding sustained

No remand, general group-transfer exemption, independent beneficial-ownership ruling or quantified capital-gains computation.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Separate the statutory condition from the evidence said to prove it. Under this historical section 52, connected parties and a transfer at par did not themselves establish an avoidance object. For a reference challenge, identify the alleged legal defect precisely: misapplied law, an actual construction question, omitted material, absence of evidence or perversity. Re-labelling a supported factual inference as legal, or pointing to a large tax amount, was insufficient here. The decision does not immunise every Tribunal finding from review or make a formal contract unnecessary for unrelated legal purposes.

CIT v. Biju Patnaik (9 May 1986), [1986] 3 SCR 26, expressly repeats I.C.I.'s reference-jurisdiction distinctions. It also illustrates their qualification: non-consideration of relevant evidence could vitiate factual findings and warrant references, without the Supreme Court finally deciding the correct tax facts. That later decision supports this jurisdictional principle, not a fresh section 52 ruling (physical pages 12, 16 and 19/SCR 37 C-E, 41 B-G and 44 B-E).

The government-hosted 2011 compilation records section 52's omission by Finance Act, 1987 from 1 April 1988 and the insertion of its later subsection (2) from 1 April 1964. Those are compilation amendment notes, not separately authenticated amending Gazette originals. The same compilation's section 256 text limits that reference route to section 254 orders passed before 1 October 1998; its section 260A text requires a substantial question of law and judicial formulation, subject to the recorded-reasons provision for an additional substantial question. I.C.I.'s section 256 procedure should therefore not be copied wholesale into a later appeal (physical page 363/printed 1.322 and pages 912-915/printed 1.871-1.874). This bounded historical check excludes the compilation's uncommenced National Tax Tribunal material. Comprehensive later treatment, current-law applicability and any 2025 mapping remain not_verified.

Source: See the proposition-specific paragraph and PDF-page references below.

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1308 of 1970

Outcome: Allowed; all four directed reference questions fall with the High Court order

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, appeal, author, AY and compulsory-reference posture

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR138 heading;139 E-H

2.

Topic: Actual 1961 assessment, arrangement and prior scheme

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR140 A-141 E

3.

Topic: Original section 52 text, previous approval and factual ingredients

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR141 E-142 D

4.

Topic: IEL evidence and pre-existing understanding

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7

Paragraphs: SCR142 D-144 F

5.

Topic: ACCI and ATIC evidence; accepted affidavit facts

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR144 G-145 F

6.

Topic: Six requested questions, four pressed; no omitted relevant evidence

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR145 F-146 D

7.

Topic: Four questions ordered by High Court

Source url: [Open cited source](#)

Pdf pages: 9; 10

Paragraphs: SCR146 D-147 A

8.

Topic: Reference-jurisdiction rule expressly applied to 1961 section 256

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR147 B-148 A

9.

Topic: Supported scheme finding, final section 52 application and exact relief

Source url: [Open cited source](#)

Pdf pages: 11

Paragraphs: SCR148 B-E

10.

Topic: Direct I.C.I. citation and reference-jurisdiction limits

Source url: [Open cited source](#)

Pdf pages: 12

Paragraphs: SCR 37 C-E

Source role: bounded later judicial treatment

11.

Topic: Non-consideration of material and question of law; reference ordered without final factual conclusion

Source url: [Open cited source](#)

Pdf pages: 16; 19

Paragraphs: SCR 41 B-G; 44 B-E

Source role: bounded later judicial treatment

12.

Topic: Section 52 omission and later subsection (2) history

Source url: [Open cited source](#)

Pdf pages: 363

Paragraphs: Printed 1.322, section 52 omission entry and footnote 95

Source role: compilation editorial amendment history

13.

Topic: Section 256 historical reference cutoff

Source url: [Open cited source](#)

Pdf pages: 912; 913

Paragraphs: Printed 1.871-1.872, section 256(1)-(2) and footnote 34

Source role: bounded historical statutory comparison

14.

Topic: Section 260A substantial-question regime and recorded-reasons proviso

Source url: [Open cited source](#)

Pdf pages: 914; 915

Paragraphs: Printed 1.873-1.874, section 260A(1), (3)-(6); footnote 43

Source role: bounded historical statutory comparison

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The actual assessment and reference arose under the 1961 Act. The Court analyses the then section 52 and expressly applies the reference-jurisdiction principles to section 256. The 1922 provisions describe background reliefs and a cited precedent, not the governing assessment statute.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A.N. Grover, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, original section 52 and section 256

SPECIFIED LATER DECISION AND LIMITS OF THE CHECK

1.

Asset id: 1986_3_26_44

Title: Commissioner of Income-tax, Calcutta v. Biju Patnaik

Decision date: 1986-05-09

Classification: Expressly restated, with omitted-material qualification applied

Source url: [Open cited source](#)

Pdf pages: 12; 16; 19

Pinpoint: SCR 37 C-E; 41 B-G; 44 B-E

Holding limit: Direct reference-jurisdiction treatment only. Non-consideration of relevant evidence may raise a legal question; references ordered without deciding the correct factual conclusion. No later section 52 merits application.

Bounded check: verified only within explicit read bounds

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922, sections 15(C) and 56(A), as printed: background tax reliefs sought when structuring investments; Indian Income-tax Act, 1922, sections 16(2) and 18(5): dividend grossing-up background; Indian Income-tax Act, 1922, section 66(1): cited Sree Meenakshi Mills reference principles expressly applied to section 256; Finance Act, 1959: dividend-tax background; not the capital-gains reintroduction date adopted in the judicial reasoning

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 11 PDF pages; SHA-256
dd07ab15289eb6c44f538ee7fcbee19aeb9567fe904df275ce8972692f7fa0c1. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

Date, title and report citation checked against page images. Catalogue identifier 1972INSC22 is not separately printed or independently authenticated in this rendition.

The reporter headnote says capital-gains tax was reintroduced in the Finance Bill of 1959; the judicial text expressly uses November 1956 (SCR 140 F-G and 148 C-D). The judicial text controls this note. Finance Act 1959 separately concerns dividend-tax changes.; The High Court order date 8 September 1970 and reference number 50 of 1971 appear together at SCR 139 E; no silent chronological correction is made.; The judicial opening gives AY 1962-63, while the narrative dates transfers March/April 1961 without allocating the transfers. The stated year and dates are retained without reconstruction.; The three company investments and later advances are not treated as three separate appeals. There is one Supreme Court appeal and one opinion.; This is original section 52, not a finding under the subsequently introduced section 52(2) valuation-gap scheme. The quoted prior-approval requirement is preserved although no dispute about approval was adjudicated.; The report quotes extensive Tribunal reasoning. This note identifies what the Supreme Court adopted and does not present every quoted observation as an independent universal rule.; Biju Patnaik is relied on only for its express reference-jurisdiction treatment and qualification. The later source was read within registered bounds, not as a complete later-treatment survey.; The DOR-hosted 2011 compilation is historical. Amendment footnotes are distinguished from operative statutory text; its uncommenced National Tax Tribunal material is not treated as operative law. No current regime, full savings chain or 2025 crosswalk is certified.

The judicial opening expressly identifies AY 1962-63. It later dates the share transfers March/April 1961; the report supplies no allocation between those months, and this note does not infer another assessment year.

Special-leave appeal. The report identifies the Calcutta High Court order as 8 September 1970 in Income Tax Reference No.50 of 1971; this apparent docket-year anomaly is preserved, not silently repaired.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 crosswalk. Full amendment, commencement, savings and case-specific present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. not_verified. A bounded retained-source check verified Biju Patnaik's express restatement and omitted-evidence qualification, together with historical section 52 omission and section 256/260A changes in the government-hosted 2011 compilation. These checks do not establish a complete favourable/adverse citator, full amendment/savings chain or present-law applicability.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 11](#)

SHA-256: dd07ab15289eb6c44f538ee7fcbee19aeb9567fe904df275ce8972692f7fa0c1

[later reported judgment bounded - PDF pages: 19](#)

SHA-256: c726e43dde59ce66ef93e4910db8461ee24de1642d67847e6152433b3a5b2111

[official government hosted statutory compilation bounded - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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