

Devidas Vithaldas & Co. v. C.I.T., Bombay City

Civil Appeals Nos. 1452 to 1455 of 1968 — Supreme Court appeal or expressly printed appeal group decided in this judgment and connected proceedings (full list below)

[1972] 3 SCR 215 | 1972-01-28

By a three-to-one majority, the profit-linked goodwill payments were royalties for continued use, not instalments of an outright purchase price.

1922 Act: 10(2)

4 Judges | S. M. Sikri | J. M. Shelat | H. R. Khanna | G. K. Mitter

Scope of this decision

Three-to-one, agreement-specific 1922 holding; no modern goodwill-depreciation conclusion.

01 FACTS OF THE CASE

The firm's recurring payments for using its professional goodwill were deductible revenue expenditure on the majority's construction of the agreements. Padamsi reserved the goodwill when he took Amratlal into partnership, then retired in January 1951. The dissolution deed described a sale but required payment of half the net profits during Padamsi's life, then his wife's and son's lives. The share was later reduced to five annas four pies per rupee. A 1955 partnership with Chandrakant adopted the obligation. Payments to Padamsi's widow during 1955-1959 were disallowed as capital by the assessing authorities; the Tribunal allowed them, but the Bombay High Court reversed.

Source: [SCR220-223: deeds, payment obligation and procedural history.](#)

02 DISCUSSION BY THE HON'BLE COURT

Shelat J, with Khanna and Mitter JJ, emphasised the true legal relationship disclosed by the whole document and surrounding circumstances. Labels were not conclusive, but neither could a taxing authority substitute an imagined economic substance for contractual rights. Acquiring goodwill itself was capital expenditure; paying for its use could be revenue. Here there was no fixed aggregate price or definite payment period. Amounts fluctuated with profits, and the obligation depended on continued business in the specified or similar name. Clause 6 required successors or new partners to accept a similar agreement. Together these features supported a licence. The capital/revenue tests of enduring benefit, fixed capital and payment once for all remained contextual guides. Sikri CJ dissented: the express sale language controlled, profit-based payment did not change capital character, and clause 6 protected the seller rather than establishing a licence.

Source: [SCR218-219 dissent;224-232 majority principles and construction.](#)

03 JUDICIAL DECISION

The majority restored the deduction as royalty-like revenue expenditure under the 1922 Act. It expressly found it unnecessary to decide the alternative argument that overriding title diverted the payments before they became the firm's income. The dissent's proposed dismissal was not the Court's order.

Source: [SCR232A-C: licence, deduction and overriding title not reached.](#)

04 OUTCOME / IN WHOSE FAVOUR

Appeals allowed by the majority with costs in the Supreme Court and High Court, one set. The disputed goodwill-use payments were admissible deductions on these agreements.

Source: [SCR232 final majority order](#).

05 AKHB REVIEW POINT

Analyse what rights passed before analysing how the price was measured. A profit formula alone does not make acquisition costs deductible. This is a fact-sensitive 1922 Act decision, with a substantial dissent; it does not establish modern goodwill depreciation, nor decide the alternative diversion doctrine.

Source: [SCR224,226-227,230-231: legal rights and transaction-specific analysis](#).

APPEAL AND PROCEEDING NUMBERS

Civil Appeals Nos. 1452 to 1455 of 1968 — Supreme Court appeal or expressly printed appeal group decided in this judgment / Income Tax Reference No. 49 of 1962 — Originating High Court appeal/reference docket; not an additional Supreme Court appeal

SOURCE & VERIFICATION

Original reported Supreme Court judgment

18-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 18 physical texts/images, SCR215-232. Full headnote, identity, SC1452-1455/1968 v originating Bombay ITR49/1962; Sikri dissent 218-219 separated from Shelat for Shelat/Khanna/Mitter 219-232; final majority order allows costs here/HC one set. Overriding-title issue expressly unnecessary. p232 refers October 18, 1951 versus earlier deed consistently 1955; preserve anomaly. Header p219 says Shelat while dissent still continues; opinion introductions control. Citation-only Coal Shipment 1494-1498/1971 not present appeal group.

Open cited source rendition

SCR 232 refers to the second deed as 18 October 1951; earlier text repeatedly gives 18 October 1955. Both remain recorded.

SCR 219 running header names Shelat although Sikri's dissent continues until the explicit Shelat introduction. Opinion boundaries control.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10(2)

Whole 37, displayed 2025, retains a general business-purpose deduction that excludes capital expenditure, with additional statutory restrictions. Classifying the rights actually obtained remains distinct from assuming deduction because consideration tracks profits. No goodwill-depreciation provision reviewed or determined.

Whole 34(1)-(3), displayed 2026, also excludes capital/personal expenditure and contains purpose-based restrictions. This bounded comparison does not decide goodwill depreciation or apply the majority's construction automatically to a new agreement.

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.

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment is adopted here; comprehensive subsequent history remains unverified.

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

No claim that later treatment is absent. Authorities discussed inside the primary judgment are source-field content, not later-use evidence.

IDENTIFIED SOURCE LINKS

[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.

AI DISCLOSURE

AI-assisted research. The AKHB Review Point is editorial analysis, not part of the Court's judgment.

PROFESSIONAL DISCLAIMER

AI-assisted legal research note for general information and professional research. It is not legal or tax advice. Verify the original judgment, applicable statutory version and subsequent judicial treatment before relying on it. The AKHB Review Point is editorial analysis, not part of the Court's judgment.