

The Commissioner of Income-tax, Calcutta v. Gillanders Arbuthnot & Co. (and vice versa)

Civil Appeal No. 1452 of 1969 — Revenue's Supreme Court certificate appeal on capital-gain computation; dismissed with costs and connected proceedings (full list below)

[1973] 2 SCR 437 | 1972-09-27

A genuine sale for Rs. 75 lakh remained a sale although shares discharged the price; the bargained money consideration governed old-section 12B computation, while material nondisclosure justified reopening.

1922 Act: 12B(1) | 1922 Act: 12B(2), first proviso | 1922 Act: 34(1)(a) | 1922 Act: 66(1)

4 Judges | K. S. Hegde | P. Jaganmohan Reddy | I. D. Dua | H. R. Khanna

01 FACTS OF THE CASE

For assessment year 1947-48, the firm transferred investments to a connected company under a 28 February 1947 agreement fixing Rs. 75 lakh as price. A separate Rs. 14.90 lakh admitted the company to a 99% partnership interest. Company shares satisfied the agreed sums. The original assessment omitted capital gains; reassessment under section 34(1)(a) of the Indian Income-tax Act, 1922 followed. The assessee challenged reopening and taxability, while Revenue sought a larger gain based on market value. The goodwill and partnership-admission conclusions were not contested before the Supreme Court.

Source: [SCR 439F-442H and 447E-G](#)

02 DISCUSSION BY THE HON'BLE COURT

Hegde J applied the duty to disclose primary facts, distinct from an obligation to explain their legal consequences. Producing the partnership deed did not disclose the separate sale agreement, sale consideration or valuation material required to assess capital gains. Reopening was valid. On characterization, the Tribunal's finding of a genuine sale was upheld. Tax authorities could uncover a concealed legal relationship, but could not replace the actual relationship with a preferred description of economic substance. An agreed money price followed by an allotment satisfying that debt differed from an exchange of assets directly for shares. The first proviso to section 12B(2) did not authorize market-value substitution here: the transaction preceded introduction of section 12B, defeating the asserted object of avoiding that liability.

Source: [SCR 443A-450C](#)

03 JUDICIAL DECISION

The Court rejected both "mere readjustment" and "exchange" theories. With the special proviso inapplicable, full consideration meant the Rs. 75 lakh bargained sale price, rather than market value of the allotted shares. It upheld reopening, capital-gains liability and the High Court's computation. The report contains inconsistent printed gain figures; this note relies on the unambiguous consideration holding without silently repairing the quantum.

Source: [SCR 445A-E, 447C-D, 449D-451F](#)

04 OUTCOME / IN WHOSE FAVOUR

Both certificate appeals were dismissed with costs. The assessee failed on reopening and liability; Revenue failed to replace the contractual price with a larger market-value measure.

Source: [SCR 451E-F](#)

05 AKHB REVIEW POINT

Read the operative agreement to distinguish a money debt satisfied with shares from direct share-for-asset consideration. Check current valuation deeming provisions before using the contractual-price principle, and the correct reassessment regime before invoking the disclosure discussion. The old anti-avoidance proviso's failure on these dates is not a general immunity for connected-party transfers. Verify the inconsistent report figures against another authoritative report before relying on a precise gain. The bounded charge/computation comparison is 1961 sections 45(1)/48 to 2025 sections 67(1)/72.

Source: [SCR 440D, 442H, 445G-447D, 449E-451F](#); [editorial limits and print anomalies](#); [Identity/version and section 45\(1\) only](#), HTML 38-67. [No complete section 45 read claimed](#); [Whole displayed section 48](#), [provisos/explanations and annotations](#), HTML 38-102. [CII annotation ends at 2024-25](#); [not a current-year CII determination](#); [Section 67\(1\) only](#), web 4985-4988, physical 122. [No complete section 67 read claimed](#); [Whole section 72\(1\)-\(8\)](#), web 5586-5650, physical 137-138; [Whole 147 and Explanation](#); HTML 38-64; [Whole 148\(1\)-\(3\)](#), [provisos and footnotes 75-76](#); HTML 38-81; [Whole 151 and substitution annotation](#); HTML 40-70; [New personal read of retained official 1961 displayed 2026 whole sections 147, 148\(1\)-\(3\) and 151, with explanations/provisos/amendment annotations](#); [respective HTML 38-64, 38-81, 40-70](#). [Complete 2025 FA2026 sections 279-285](#), web 15023-15188, physical 371-376, [with current section 283 distinguished from superseded footnote 60](#). [No complete 1961 148A/149/150/152/153 or 2025 286 read claimed](#).

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 1452 of 1969 — Revenue's Supreme Court certificate appeal on capital-gain computation; dismissed with costs / Civil Appeal No. 1502 of 1969 — Assessee's Supreme Court certificate appeal on reopening and capital-gains liability; dismissed with costs / Income-tax Reference No. 101 of 1966 — Originating Calcutta High Court reference; judgment dated 13 September 1968

SOURCE & VERIFICATION

Original reported Supreme Court judgment

15-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.

Open cited source rendition

SCR 440 and 442 state the High Court gain as Rs. 27,04,772; SCR 439 headnote says Rs. 2,74,772 and SCR 451 prints Rs. 27,4 772. The cost printed at SCR 446 is Rs. 47,95,728, which does not arithmetically produce Rs. 27,04,772 when deducted from Rs. 75 lakh. No silent numerical correction is adopted.

SCR 445 quotes section 12B(1) using transfers after 31 March 1956 despite the 1947 transaction; SCR 447 expressly discusses introduction from 1 April 1947. The quotation is a source-version anomaly, not a new factual date.

SCR 437 headnote uses section 24(1)(a) once; the questions and judicial body repeatedly specify section 34(1)(a).

STATUTORY SCOPE

Indian Income-tax Act, 1922; 12B(1), 12B(2), first proviso, 34(1)(a), 66(1)

Official displayed 2025 section 45(1) charges capital-asset transfer gains subject to stated exceptions; section 48 supplies consideration-minus-expenses/cost computation with its provisos. Only 45(1), not all of section 45, was read; modern valuation deeming rules are not exhaustively checked. Separately read 2026 sections 147/148/151 use a differently worded information/notice/approval framework; no complete 147-153 crosswalk is claimed.

Section 67(1) and complete section 72 in the Finance Act 2026 compilation provide bounded charge/computation comparisons to 45(1)/48. Their exceptions, indexation and special computation rules must be applied independently; the 1922 result is not automatically carried forward. Reopening comparisons are 147→279, 148→280 and 151→284, with complete 279-285 read and superseded section 283 footnote text distinguished. Old section 34 conditions do not decide modern notices.

Legacy 1922 holding. Exact compared versions and bounded read scopes are recorded in sources; no automatic present-law carryover or exhaustive tax-year/repeal/savings determination.

LATER TREATMENT

Source checked 2026-10-07. No specific later judicial use has been adopted for this note in this bounded review. This is a verification limit, not an assertion that none exists.

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

IDENTIFIED SOURCE LINKS

[Income-tax Act, 1961: section 45\(1\)](#)

Official HTML displayed 2025; not verified as a complete 2026 consolidation Identity/version and section 45(1) only, HTML 38-67. No complete section 45 read claimed. New personal bounded read of retained coordinator official web text. No fresh author acquisition, original PDF/HTML hash, page-image inspection or complete current-applicability/savings certification.

[Income-tax Act, 1961: section 48](#)

Official HTML displayed 2025; not verified as a complete 2026 consolidation Whole displayed section 48, provisos/explanations and annotations, HTML 38-102. CII annotation ends at 2024-25; not a current-year CII determination. New personal bounded read of retained coordinator official web text. No fresh author acquisition, original PDF/HTML hash, page-image inspection or complete current-applicability/savings certification.

[Income-tax Act, 2025: section 67\(1\)](#)

Official 2025 Act as amended by Finance Act 2026; section 34 HTML displays 2026 Section 67(1) only, web 4985-4988, physical 122. No complete section 67 read claimed. New personal bounded read of retained coordinator official web text. No fresh author acquisition, original PDF/HTML hash, page-image inspection or complete current-applicability/savings certification.

[Income-tax Act, 2025: section 72](#)

Official 2025 Act as amended by Finance Act 2026; section 34 HTML displays 2026 Whole section 72(1)-(8), web 5586-5650, physical 137-138. New personal bounded read of retained coordinator official web text. No fresh author acquisition, original PDF/HTML hash, page-image inspection or complete current-applicability/savings certification.

[Income-tax Act, 1961: section 147](#)

Official displayed 2026, retained149 capture newly read Whole 147 and Explanation; HTML 38-64. Retained web-extracted text only; no new download, source-image or raw PDF/HTML hash claim.

[Income-tax Act, 1961: section 148](#)

Official displayed 2026, retained149 capture newly read Whole 148(1)-(3), provisos and footnotes 75-76; HTML 38-81. Retained web-extracted text only; no new download, source-image or raw PDF/HTML hash claim.

Income-tax Act, 1961: section 151

Official displayed 2026, retained149 capture newly read Whole 151 and substitution annotation; HTML 40-70.
Retained web-extracted text only; no new download, source-image or raw PDF/HTML hash claim.

Income-tax Act, 2025: sections 279-285

Finance Act 2026 compilation, retained149 capture newly read New personal read of retained official 1961 displayed 2026 whole sections 147, 148(1)-(3) and 151, with explanations/provisos/amendment annotations; respective HTML 38-64, 38-81, 40-70. Complete 2025 FA2026 sections 279-285, web 15023-15188, physical 371-376, with current section 283 distinguished from superseded footnote 60. No complete 1961 148A/149/150/152/153 or 2025 286 read claimed. Retained web-extracted text only; no new download, source-image or raw PDF/HTML hash claim.

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