

COMMISSIONER OF INCOME-TAX WEST BENGAL-II, CALCUTTA v. M/S. BIRLA GWALIOR (PVT.) LTD.

Civil Appeal Nos. 242 to 244 (NT) of 1970 — Supreme Court appeal or expressly printed appeal group decided in this judgment and connected proceedings (full list below)

[1973] 3 SCR 902 | 1973-04-04

On these agreements, waived commission had not really accrued; office allowance separately foregone for established commercial expediency qualified under 1922 section 10(2)(xv).

1922 Act: 10(1) | 1922 Act: 10(2)(xv) | 1922 Act: 66(2)

2-judge bench | K. S. Hegde, J. | H. R. Khanna, J.

01 FACTS OF THE CASE

Birla Gwalior, managing agent of two companies, gave up commission after the financial year ended but before the managed companies' accounts were prepared. The agreements fixed no due date, and commission depended on their net profits. It also waived one company's office allowance before year-end. For assessment years 1954-55 to 1956-57, the officer rejected relief. The Tribunal found commercial expediency and accepted the claims; the High Court treated the commission question as academic and answered the office-allowance question for the assessee. The operative enactment was the Indian Income-tax Act, 1922.

Source: [SCR904B-905G](#)

02 DISCUSSION BY THE HON'BLE COURT

The Supreme Court treated the two receipts separately. For office allowance, the Tribunal's binding factual finding was that the waiver stabilised the managed company's finances and enabled higher subsequent earnings for the agent. Chandulal Keshavlal supported deduction under section 10(2)(xv); describing the allowance as reimbursement did not alter that conclusion. For commission, mercantile accounting did not alone establish year-end accrual. The sum was ascertainable only after the managed companies made up their accounts, and the waiver preceded that stage. Kashiparekh and Poona Electric supported examining real income in the whole commercial setting. Morvi Industries was distinguished because remuneration there had already become due under the agreement and commercial expediency was not established.

Source: [SCR905H-910A](#)

03 JUDICIAL DECISION

The commission had not really accrued on these facts, so no hypothetical income was taxable under section 10(1). The office allowance was allowable under section 10(2)(xv). Despite procedural incongruities in calling for a reference and then declining to answer the commission question, the High Court's ultimate conclusion was correct.

Source: [SCR906A-F,910A-F](#)

04 OUTCOME / IN WHOSE FAVOUR

All three Revenue appeals were dismissed with costs and one set of hearing fees. The assessee retained relief on both commission and office allowance, through their distinct legal routes.

Source: [SCR910F](#)

05 AKHB REVIEW POINT

Start with the contract, the event creating an enforceable entitlement, and the timing of the waiver. Keep “income never accrued” separate from “accrued income followed by deductible expenditure”. A later concession does not automatically erase accrued income, and commercial expediency requires facts. This judgment’s result depends on both the agreement and the Tribunal’s findings. Godhra Electricity later uses Birla’s real-accrual reasoning and preserves the limit against erasing accrued income by later conduct.

Source: [SCR906D-F,908D-910A](#); [section28 opening and clause\(i\), web lines67-69](#); [adjacent compensation clauses not used](#); [section26\(1\),\(2\)\(a\), web lines2189-2194, reported physical55-56](#); [Main section37\(1\), web lines12681-12686, reported physical291/printed1.250](#); [incomplete following Explanation not adopted](#); [section34\(1\)-\(3\), web lines2657-2683, reported physical67-68](#); [Title and section 1\(3\), physical1/web0-13](#); [section536\(1\),\(2\)\(a\)-\(c\), physical584-585/web24385-24399](#); [subsections\(3\)-\(4\), physical589/web24597-24601](#). No full-section536 reading claimed.; [Identity/header and web lines119-137](#); [Court’s discussion of real accrual, Birla quotation at125-127 and post-accrual limit at136](#).

APPEAL AND PROCEEDING NUMBERS

Civil Appeal Nos. 242 to 244 (NT) of 1970 — Supreme Court appeal or expressly printed appeal group decided in this judgment / Income-tax Reference Nos. 187, 188 & 189 of 1963 — Originating High Court appeal/reference docket; not an additional Supreme Court appeal

SOURCE & VERIFICATION

Original reported Supreme Court judgment

9-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 905 A prints “Milk Manufacturing” although surrounding passages identify “Silk Manufacturing”; the stray wording is not adopted as a separate company.

The Morvi discussion shifts its stated years at SCR 909 C-E; no date from that auxiliary summary is used to alter this case’s assessment years.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10(1), 10(2)(xv), 66(2)

The official 2024 (No. 1)-labelled section 28(i) charges business/profession profits and gains. This bounded charging-text comparison does not establish a rule overriding later specific valuation or anti-avoidance provisions. Separately, the Department-hosted 2011 section 37(1) requires wholly/exclusively business expenditure and excludes capital/personal expenditure; that source is historical, not a complete current section 37 reproduction.

Section 26(1)-(2)(a), Finance Act 2026 edition, charges business/profession profits and gains. The historical genuine-transaction or real-accrual analysis still requires the particular governing computation provisions. Section 34(1)-(3) provides a distinct general expenditure rule and express exclusions. It should not be merged with the anterior question whether commission accrued.

The checked section 1(3) generally commences the 2025 Act on 1 April 2026. Section 536 preserves previous operation and accrued rights and keeps specified pre-commencement-year proceedings under the 1961 Act, subject to its savings. None of these comparisons retrospectively replaces the operative law of the judgment.

LATER TREATMENT

Source checked 2026-10-07. Godhra Electricity, 3 April 1997, substantively cites Birla for real rather than hypothetical accrual under mercantile accounting. The same discussion cautions that later unilateral conduct cannot turn income that actually accrued into no income; it does not make every waiver non-taxable.

Subsequent-history status remains unverified beyond any specific use recorded below.

IDENTIFIED SOURCE LINKS

[Income-tax Act, 1961; Page labels2024\(No.1\)](#)

Page labels2024(No.1) section28 opening andclause(i), web lines67-69; adjacent compensation clauses not used Selected web-extracted statutory passages personally read; no raw-PDF, rendered-page or full-enactment read claimed. The stated version and bounds control this comparison.

[Income-tax Act, 2025; FA2026](#)

FA2026 section26(1),(2)(a), web lines2189-2194, reported physical55-56 Selected web-extracted statutory passages personally read; no raw-PDF, rendered-page or full-enactment read claimed. The stated version and bounds control this comparison.

[Income-tax Act, 1961; Department-hosted2011 compilation,1251 reported PDF pages](#)

Department-hosted2011 compilation,1251 reported PDF pages Main section37(1), web lines12681-12686, reported physical291/printed1.250; incomplete followingExplanation not adopted Selected web-extracted statutory passages personally read; no raw-PDF, rendered-page or full-enactment read claimed. The stated version and bounds control this comparison.

[Income-tax Act, 2025; FA2026](#)

FA2026 section34(1)-(3), web lines2657-2683, reported physical67-68 Selected web-extracted statutory passages personally read; no raw-PDF, rendered-page or full-enactment read claimed. The stated version and bounds control this comparison.

[Income-tax Act, 2025, as amended by Finance Act 2026](#)

Title and section 1(3), physical1/web0-13; section536(1),(2)(a)-(c), physical584-585/web24385-24399; subsections(3)-(4), physical589/web24597-24601. No full-section536 reading claimed. Selected web-extracted statutory passages personally read; no raw-PDF, rendered-page or full-enactment read claimed. The stated version and bounds control this comparison.

Godhra Electricity Co. Ltd. v. Commissioner of Income Tax (1997-04-03)

Identity/header and web lines 119–137: Court's discussion of real accrual, Birla quotation at 125–127 and post-accrual limit at 136. Bounded judicial text personally read from a public third-party rendition; no court-original PDF or image validation claimed.

AI DISCLOSURE

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