

## Commissioner of Income Tax, Gujarat-II, Ahmedabad v. R. M. Amin

Civil Appeal No. 51 of 1972

[1977] 2 SCR 220 | 1976-11-26

**Whether money received on liquidation of a Uganda company, agreed to fall outside the historical section 2(17) definition, arose from a transfer under sections 45 and 2(47), and whether section 46(2) was only computational or also created the shareholder charge.**

2(14) | 2(17) (historical company definition) | 2(47) | 45 | 46(1) | 46(2) | 48 | 256(1)

Two-judge bench | H.R. Khanna, J. | Jaswant Singh, J.

Assessment years: 1962-63

### Historical liquidation ruling and company definition; later transfer-law qualifications

This decision concerns AY 1962-63 and a Uganda company agreed to be outside section 2(17) as it then stood. Section 46(2) was both a shareholder charging and computation provision; the company-level rule in section 46(1) is distinct. Do not turn the result into a current exemption for all foreign-company distributions or all extinguishments of shares. Anarkali later distinguished liquidation from redemption; Grace Collis rejected a general restriction on independent extinguishment but did not decide Amin or section 46. Only those bounded later checks are verified; comprehensive later treatment, present law and 2025 mapping remain unverified.

### 01 FACTS OF THE CASE

For AY 1962-63, with calendar year 1961 as the previous year, the individual assessee held 192 shares of Kawelengoji Gineries Ltd., Kampala, incorporated in Uganda. He had acquired them before 1 January 1954 for Sh.1,000 each, a total of Sh.1,92,000 equivalent to Rs.1,28,000. A special resolution of 10 July 1961 put the company into voluntary liquidation. The liquidators sold its assets, and their account drawn on 31 July 1961 entitled him to Sh.4,68,489, equivalent to Rs.3,12,326, as return of capital. The receipt during the previous year exceeded acquisition cost by Rs.1,84,326 (physical page 2/SCR 221 C-F).

The Income-tax Officer taxed that excess under section 45. The parties agreed that the Uganda company was outside section 2(17) as it then stood, so section 46(2) did not apply. The Appellate Assistant Commissioner found no relinquishment but considered the rights in the shares extinguished. The Tribunal rejected the transfer charge; it also calculated a conditional gain of Rs.1,23,590 using the shares' 1 January 1954 value, if a gain were chargeable. The separate section 114 rate contention was not before the Supreme Court. The Gujarat High Court answered the section 256(1) reference against the Revenue, which appealed on certificate (physical pages 2-4/SCR 221 B-223 D).

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

## 02 DISCUSSION BY THE HON'BLE COURT

The Court expressly applied the 1961 Act's provisions at the material time. The historical section 2(17) covered Indian companies and the specified associations assessed/assessable as companies for the year beginning 1 April 1947 or declared companies by the Board. The Uganda company's exclusion from that definition was common ground; the Court did not hold that foreign incorporation invariably excludes a company. The shares were admittedly capital assets (physical page 4/SCR 223 A–D).

The Revenue argued that the liquidation receipt followed an extinguishment of rights within section 2(47). The Court rejected that application. Drawing on *Madurai Mills*, decided under former section 12B, it treated distribution as satisfaction of the shareholder's existing right to the net assets rather than creation of new rights through a transfer. It expressly applied that reasoning to the suggested extinguishment in this liquidation setting (physical page 5/SCR 224 C–H).

Section 46 required separate attention. Subsection (1) addressed a distribution by the company; subsection (2) expressly charged the shareholder's receipt and prescribed the computation, including the reduction for the dividend component described in section 2(22)(c) and deemed consideration for section 48. The Court rejected the Revenue's contention that subsection (2) merely supplied machinery for a liability already imposed by section 45. In its view, without subsection (2) the shareholder's receipt on liquidation could not be charged in the manner urged. That special provision applied only to companies within the historical section 2(17) definition, and the legislature had made no equivalent provision for the other companies at issue. Legislative history could not override the statutory words (physical pages 4–6/SCR 223 G–225 G).

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

## 03 JUDICIAL DECISION

The Revenue's appeal was dismissed with costs. The High Court's negative answer to the transfer question remained undisturbed, and the liquidation receipt was not chargeable to capital-gains tax on the basis asserted for AY 1962–63 (physical page 6/SCR 225 G; reference question at page 2/SCR 221 B–C).

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

## 04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Revenue appeal dismissed with costs; negative reference answer sustained

Final decision of the historical liquidation-receipt charge under sections 45, 2(47), 46(2) and 2(17)

Specific liquidation distribution and historical company definition. The conditional valuation figure was not an actual taxable-gain award; the section 114 rate point was outside this appeal. No universal exemption for foreign-company distributions, share redemptions or every extinguishment of rights is established.

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

**05 AKHB REVIEW POINT**

Separate three questions: what transaction occurred, whether the distributing body came within the company definition for the relevant year, and which provision charged the shareholder. Here liquidation satisfied an existing shareholder right, and the agreed historical definition excluded the Uganda company from section 46(2). Calling subsection (2) only a computation rule loses an express part of the Court's reasoning; treating subsection (1) as the shareholder's exemption confuses the company and shareholder levels.

A bounded later check reinforces the transaction-specific reading. Anarkali Sarabhai distinguished Amin's liquidation distribution from taxable preference-share redemption (physical pages 8–9/SCR 507 G–508 C) and left its final independent-extinguishment contention undecided (page 11/SCR 510 F–G). Separately, Grace Collis rejected Vania's general restriction of section 2(47) to extinguishment consequential on an already established transfer (physical page 9/SCR 106 B–E). Grace concerned amalgamation and the cost of replacement shares later sold; it neither cited Amin nor decided section 46. These passages do not support saying Amin was overruled by Grace, but they make an unrestricted "extinguishment is never transfer" summary untenable.

The historical section 2(17) text must remain beside the result. This note supplies neither a complete amendment history nor a present-law conclusion for any contemporary foreign company, liquidation or distribution.

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

**PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES**

1.

**Topic:** Date, bench and complete appeal docket

**Source url:** [Open cited source](#)

**Pdf pages:** 1

**Paragraphs:** SCR 220 heading and H

**Source role:** reported metadata

2.

**Topic:** Actual assessment year, reference and liquidation receipt

**Source url:** [Open cited source](#)

**Pdf pages:** 2

**Paragraphs:** SCR 221 B–H

**Source role:** judicial text

3.

**Topic:** Conditional valuation and rate issue outside appeal

**Source url:** [Open cited source](#)

**Pdf pages:** 3

**Paragraphs:** SCR 222 A–D

**Source role:** judicial text

4.

**Topic:** Historical statutory scope and common-ground company status

**Source url:** [Open cited source](#)

**Pdf pages:** 4

**Paragraphs:** SCR 223 A–H

**Source role:** judicial text

5.

**Topic:** Section 46(2) computation and liquidation-right reasoning

**Source url:** [Open cited source](#)

**Pdf pages:** 5

**Paragraphs:** SCR 224 A–H

**Source role:** judicial text

6.

**Topic:** Independent charge, historical definition limitation, disposal and costs

**Source url:** [Open cited source](#)

**Pdf pages:** 6

**Paragraphs:** SCR 225 A–G

**Source role:** judicial text

7.

**Topic:** Direct later distinction: liquidation versus preference-share redemption

**Source url:** [Open cited source](#)

**Pdf pages:** 8; 9

**Paragraphs:** SCR 507 G–508 C

**Source role:** direct later judicial treatment

8.

**Topic:** Separate extinguishment contention expressly reserved

**Source url:** [Open cited source](#)

**Pdf pages:** 11

**Paragraphs:** SCR 510 F–G

**Source role:** direct later judicial treatment

9.

**Topic:** Vania insurance result distinguished from broad transfer proposition

**Source url:** [Open cited source](#)

**Pdf pages:** 7; 8; 9

**Paragraphs:** SCR 104 F–106 E

**Source role:** bounded later judicial comparison

## JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

H.R. Khanna, J.

## ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, provisions at the material time for AY 1962-63

## OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Income-tax Act, 1961: section 2(22)(c) within the quoted section 46(2) computation; section 47 mentioned as context; sections 53 and 54 in the quoted historical section 45; section 114 contention expressly outside the Supreme Court's issue; Indian Income-tax Act, 1922: section 12B and its historical amendments, discussed as background and through Madurai Mills, not the governing assessment provision

## SPECIFIED LATER JUDICIAL OR STATUTORY CHECKS AND THEIR LIMITS

1.

**Kind:** direct later judicial treatment

**Status:** bounded verified

**Title:** Anarkali Sarabhai v. Commissioner of Income Tax, Ahmedabad (24 January 1997)

**Source urls:** [https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997\\_1\\_500\\_510\\_EN.pdf#page=8](https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997_1_500_510_EN.pdf#page=8); [https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997\\_1\\_500\\_510\\_EN.pdf#page=9](https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997_1_500_510_EN.pdf#page=9); [https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997\\_1\\_500\\_510\\_EN.pdf#page=11](https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=1997/english/1997_1_500_510_EN.pdf#page=11)

**Finding:** Anarkali distinguished Amin as a liquidation-distribution case when upholding taxation of preference-share redemption as sale/relinquishment. It did not overrule Amin. It expressly did not decide the final argument about extinguishment of the shares themselves because clause (i) disposed of the appeal.

**Limit:** Full text and specified images checked only for this comparison. No later case-chain or current-law certification.

2.

**Kind:** later judicial comparison

**Status:** bounded verified

**Title:** Commissioner of Income Tax, Cochin v. Mrs. Grace Collis and Others (23 February 2001)

**Source urls:**

[https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=2001/english/2001\\_2\\_98\\_107\\_EN.pdf#page=7](https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=2001/english/2001_2_98_107_EN.pdf#page=7);  
[https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=2001/english/2001\\_2\\_98\\_107\\_EN.pdf#page=9](https://indian-supreme-court-judgments.s3.amazonaws.com/data/pdf/year=2001/english/2001_2_98_107_EN.pdf#page=9)

**Finding:** Grace Collis disapproved Vania's general restriction of extinguishment to that consequent on an independently established transfer; section 2(47) can include independent extinguishment. It did not disturb Vania's stated insurance result in that discussion. It applied sections 47(vii) and 49(2) to the cost of replacement shares later sold. Its judicial text does not cite Amin or decide section 46/liquidation, so this is not evidence that Grace overruled Amin.

**Limit:** All 10 pages read in text and images. A bounded conceptual comparison, not direct treatment of Amin or a comprehensive current-law check.

## SOURCE & VERIFICATION

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

Identified source rendition: 6 PDF pages; SHA-256

6513f7029a83d1662c4d9977ee9b57b65583d5db73dc454e124d318c6d58d35c. Original bytes preserved.

Judicial body begins physical page 2/SCR 221 B (Khanna J.) and ends physical page 6/SCR 225 G. Page 1 contains reporter headnote and appellate metadata; page 2 begins with counsel. No neighbouring judgment.

#### Open cited source rendition

Decision dated 26 November 1976; SCR volume year 1977.; The controlling figure of Sh.1,92,000 comes from judicial reasons; the headnote has a malformed shilling figure.; At SCR 223 F–G the printed introduction to section 46 repeats the section 45 lead-in. The quoted provision itself is plainly numbered 46; the repetition is not silently treated as a different statutory rule.; Counsel agreed that this Uganda company was outside the company definition at the material time. This is not a general classification of all foreign companies.; Grace Collis's reporter summary has a contradictory sentence about independent extinguishment; its judicial reasons at SCR 106 B–C control this comparison. Its printed answer labels at SCR 106 F are internally awkward; no result in this note is based on those labels.; Anarkali's amount/date inconsistencies are not used for the bounded distinction; the distinction itself and its reserved clause (ii) issue are explicit in the judicial reasons.

The judicial body expressly states AY 1962–63 and calendar year 1961 as the accounting previous year. The 1977 year is the SCR report year, not the decision or assessment year.

### STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no current-law carryover certification. Verify the applicable statutory version separately.

### LATER TREATMENT

Source checked 2026-10-05. not\_verified. Only the expressly bounded Anarkali distinction and Grace Collis comparison have been checked from primary reports. No comprehensive subsequent-treatment search, full statutory amendment chain, current-law certification or Income-tax Act, 2025 crosswalk has been completed.

### IDENTIFIED SOURCE LINKS

#### reported judgment - PDF pages: 6

SHA-256: 6513f7029a83d1662c4d9977ee9b57b65583d5db73dc454e124d318c6d58d35c

#### bounded direct later judicial treatment - PDF pages: 11

SHA-256: 613241b53eee64a8fec59151d3ab4b6a71577474a354677345358c69d362a05a

#### bounded later judgment comparison - PDF pages: 10

SHA-256: fba25e6e092b0b2a6e68727f534c644e779cc918ade4c92ad99214c9cf0ae693

### AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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