

COMMISSIONER OF INCOME TAX GUJARAT III, AHMEDABAD & ANOTHER v. KURJI JINABHAI KOTECHEA

Civil Appeal No. 580 of 1972; Originating High Court proceedings: Income-tax Reference No. 9/68

[1977] 3 SCR 26 | 1977-02-18

Losses on banned forward contracts could neither be adjusted against other-business profits nor carried forward into later lawful speculation under section 24. Current-year computation of the same illegal business's real profit remained a distinct permissible exercise.

2-judge bench | P.K. Goswami, J. | Jaswant Singh, J.

01 FACTS OF THE CASE

An oil-mill operator also traded and speculated in groundnuts, seeds and oil. For 1957-58, the Income-tax Officer disallowed Rs. 73,348 arising from forward contracts admittedly banned under section 15(4) of the Forward Contracts (Regulation) Act. In arriving at that amount, he had already netted the groundnut-seed business's profit at Rajkot against its loss at Veraval.

The appellate authority separated Rs. 31,745 of hedging loss from Rs. 41,603 of other speculative loss. The Tribunal allowed the former against other profits and carried the latter forward under section 24. The Gujarat High Court upheld that treatment using its S.C. Kothari decision, which the Supreme Court had subsequently partly reversed.

Source: [SCR27E-29A](#)

02 DISCUSSION BY THE HON'BLE COURT

Kothari distinguished the computation of real business profits from statutory set-off. Illegal trading still yields taxable net profits, so related trading losses and legitimate business expenses cannot simply be ignored while gross receipts are taxed. But contracts contemplated by the speculative set-off provision had to be enforceable; losses on contracts invalidated by the statutory ban could not obtain that separate benefit.

No remand was required here. The necessary same-business adjustment had already been made, and the Court regarded the Rs. 73,348 balance as properly computed. The Rs. 31,745 hedging loss therefore could not be set off against profits of other businesses.

The Rs. 41,603 carry-forward claim also failed. Section 24(2)(i) did not permit an earlier illegal speculative business's loss to benefit later lawful speculation. The Court expressly distinguished that question from setting loss against income of the same illegal business in the same year, and from losses of a lawful speculative business that was later discontinued. It also cautioned that fines for detected and punished illegality were not trading losses allowed in computing real profits.

Source: [SCR29B-30C;31B-32D](#)

03 JUDICIAL DECISION

The Revenue's appeal was allowed with costs. The High Court judgment was set aside, and both referred questions were answered negatively in favour of the Department. The requested recomputation remand was refused.

Source: [SCR30A-C:32D-E](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue appeal allowed; both questions answered negatively. Result: Revenue. Costs: Appeal allowed with costs. Scope: Cross-business set-off and next-year carry-forward refused. Limit: Banned unenforceable contracts and historical section 24, preserving same-business current-year computation.

Source: [SCR32D-E](#)

05 AKHB REVIEW POINT

Keep three analyses separate: computing the same business's annual profit, adjusting its loss against another business, and carrying loss into another year. Establish the statutory prohibition and enforceability of the contracts. Avoid citing the decision as a blanket denial of every loss connected with unlawful trading, or as authority to deduct fines.

Source: [SCR29B-H;31C-32D](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

7-page retained public-mirror SCR report. The complete report was read as text and page images. Fresh remote authentication as a signed original is not claimed.

Open cited source rendition

Both referred questions are printed with number(2). SCR 28D prints hedging loss as Rs. 331,745, whereas the question, later narrative and holding consistently use Rs. 31,745 and total Rs. 73,348; the anomaly is disclosed. SCR 32A prints section 20(2) in the carry-forward discussion; the governing provision is expressly 24(2)(i) at 31G. The judgment repeatedly calls the current-year computation provision 10(2), while the Kothari quotation refers to 10(1); these are not silently harmonised. The headnote cites Kothari at 69 ITR 1, the High Court decision; the judicial body separately identifies the Supreme Court's partly reversing decision at 82 ITR 794. Those authorities are not conflated.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10(1), 10(2), 24(1), 24(2)(i), 66(1).

The checked 2011 sections 43(5) and 73 separately govern speculative classification and loss adjustment, with exceptions including eligible derivatives. Section 37's prohibited-purpose expenditure rule is a further comparison, not a complete statutory restatement of the old illegal-business loss holding.

Selected 2025/FA 2026 sections 66(31), 66(33) and 113 address speculative transactions, specified derivatives and loss restrictions; section 34(2)(a) addresses prohibited-purpose expenditure. They require separate legality, exception and loss analysis, not wholesale transplantation of banned 1950s forward-contract results.

Section 1(3) commenced the 2025 Act on 1 April 2026, subject to exceptions. Section 536 preserves prior operation, rights and liabilities and the 1961 procedure for specified earlier-year and pending proceedings. Determine the governing year and savings before using any comparison.

Related-section tags are research navigation only. They are not provisions decided in this judgment or verified mappings beyond any expressly bounded comparison below.

No automatic precedent carry-over or verified case-specific 2025 applicability is claimed.

LATER TREATMENT

Source checked 2026-10-07. *Shri Lal Mahal Ltd. v Joint Commissioner of Income-tax, Range-8, New Delhi* (Income Tax Appellate Tribunal, Delhi, 2011-04-29), paragraphs 3.9–3.13: Recites Kurji's treatment of banned forward-contract losses, then distinguishes commodity speculation from the food-grain dealer's foreign-exchange contracts; remands for factual equivalence/linkage enquiry. Not an assertion that all hedging losses are disallowed.

Bounded later use is recorded below. No claim of exhaustive research, absence of contrary treatment or current-law certification is made.

IDENTIFIED SOURCE LINKS

[Shri Lal Mahal Ltd. v Joint Commissioner of Income-tax, Range-8, New Delhi \(2011-04-29\), nonofficial judicial text reproduction](#)

paragraphs 3.9–3.13 Third-party public judicial text via web extraction; no court-original image validation; apparent OCR/typesetting anomalies preserved; link markup removed only in passage file; bounded passage only, not full later judgment.

[Income-tax Act, 1961, supplied DOR 2011 compilation](#)

Section 43(5), physical 315–316; section 73, physical 417; section 37 and Explanation, physical 291–292. Selected extracted text only; not present-day 1961 consolidation or source-image verification.

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

Section 66 heading, physical 117, lines 4782–4783; clauses (31), (33), physical 120–121, lines 4907–4949; section 113, physical 172–173, lines 7072–7096; section 34(2)(a), physical 67, lines 2664–2667. Selected official web-extracted text only; not full Act/raw-PDF/image/all-amendments verification. Physical pages are one-based; underlying web P indexes are zero-based.

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

Section 66 heading, physical 117, lines 4782–4783; clauses (31),(33), physical 120–121, lines 4907–4949; section 113, physical 172–173, lines 7072–7096; section 34(2)(a), physical 67, lines 2664–2667.

[2025 Act commencement and savings, selected FA 2026 text](#)

Section 1(3), physical 1, lines 0–13; section 536(2)(a)–(e), physical 584–585, lines 24385–24408.

AI DISCLOSURE

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