

Gestetner Duplicators (Pvt.) Ltd. v. Commissioner of Income-tax, West Bengal

Civil Appeal Nos. 565–570 of 1978

[1979] 2 SCR 788 | 1978-12-14

Whether contractual fixed-percentage turnover commission was salary under Fourth Schedule Part A rule 2(h) for employer provident-fund deductions under section 36(1)(iv), and whether the recognised fund satisfied rule 4(c).

36(1)(iv) (employer contributions to recognised provident fund) | Fourth Schedule, Part A, rules 2(h), 2(c), 3, 4(b) and 4(c) | 17(1)(iv), read with 15 and 16 (contrasted salary definition, not the governing definition here) | 80C and Fourth Schedule Part A rule 7 (historical employee-side contextual comparison) | 256(1), 256(2), 261 (reference and appeal routes)

3-judge bench | P.N. Bhagwati, J. | V.D. Tulzapurkar, J. | R.S. Pathak, J.

Assessment years: 1962-63, 1963-64, 1964-65

Historical salary definition and continuing fund recognition

This 14 December 1978 decision applies the historical Fourth Schedule rule 2(h), not section 17 or the 1952-Act basic-wages definition. Its commission was contractual remuneration at fixed turnover percentages; the recognised fund remained recognised, with withdrawal reserved to the Commissioner. It allows the three employer-contribution amounts for AYs 1962-63 to 1964-65 and does not establish unrestricted current deductions. Comprehensive later treatment is not verified; current-law status and 2025 mapping are not verified. The source itself differs on High Court reference No. 456/156 of 1969.

01 FACTS OF THE CASE

The company manufactured and sold duplicating machines and accessories. Its three classes of salesmen received fixed monthly salary plus commission at predetermined percentages of their own turnover, varying with article and salesman category. The commission was part of their employment contracts. The company's provident fund had been recognised in 1937 after the Commissioner asked about, and was informed of, the commission basis; recognition remained operative throughout the relevant years (physical pages 4–5 and 8/SCR 791 F–792 C; 795 A–D).

For AYs 1962-63, 1963-64 and 1964-65, the company claimed its own contributions to individual employees' fund accounts calculated on both salary and commission. The Officer disallowed the commission-linked portions of Rs.95,421, Rs.1,00,564 and Rs.1,17,969 respectively. The first appeal failed for 1962-63 but succeeded for the other two years. The Tribunal allowed the company's appeal and dismissed Revenue's appeals, treating contractual commission as salary and the fund as satisfying rule 4(c). The High Court answered both the deductibility and recognition-condition questions against the company, leading to six certificate appeals (physical pages 5–7/SCR 792–794).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court first identified the correct definition. Section 17 defines salary for the salaries head under sections 15 and 16, while rule 2(h) governs recognised provident funds. The latter, not section 17, therefore controlled this section 36(1)(iv) deduction. The judgment reproduced the historical rule's inclusion of contractually provided dearness allowance and exclusion of other allowances and perquisites, and the contribution/recognition provisions in rules 2(c), 4(b) and 4(c) (physical pages 10–12/SCR 797 F–799 C).

Salary and wages both compensate work or services. Compensation may be measured by time, work, or both. The rule did not expressly exclude commission as such, and that label covers different payments in commercial practice. Here a fixed percentage of turnover measured remuneration already due under the employment contract; combined with monthly pay it retained the character of salary. The Court therefore allowed the three proportionate employer-contribution sums. This was a finding about this contractual commission, not every payment bearing the name commission (physical pages 12–15/SCR 799 C–802 E).

The 1941 circular could not detract from the legal result of proper statutory construction; the Court also understood it as excluding commissions lacking salary character. Bridge & Roof concerned the different definition of basic wages, production bonus and the inclusion/exclusion structure of sections 2(b) and 6 of the 1952 provident-fund legislation, so its result did not govern the tax rule (physical pages 15–16/SCR 802 F–803 D).

The salary conclusion also resolved the rule 4(c) question for the company. Separately, the Court emphasised that the Commissioner knew the true contractual commission basis when recognising the fund, and the recognition remained in force. Assessing authorities could not sit in judgment on that recognition by declaring particular recognition conditions unsatisfied. If they found a contravention they could refer withdrawal to the Commissioner, who possessed rule 3 power; until withdrawal they had to proceed on the fund's satisfaction of the recognition conditions for the year. The judgment preserved that withdrawal mechanism (physical pages 16–17/SCR 803 F–804 E).

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

03 JUDICIAL DECISION

Both referred questions were answered in favour of the assessee and against Revenue. The appeals were allowed with costs. The commission-linked employer contributions of Rs.95,421, Rs.1,00,564 and Rs.1,17,969 for the three stated years were deductible under the historical section 36(1)(iv) framework (physical pages 15–17/SCR 802 D–E; 803 E–804 F).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

All six appeals allowed with costs; both reference questions answered for the assessee

Final reasoned decision on contractual commission as salary and continuing recognition

Historical employer-contribution deduction to a recognised fund, with contractually fixed-percentage remuneration and recognition still in force. Commissioner's withdrawal power remains.

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

05 AKHB REVIEW POINT

Read the employment obligation and the governing definition before classifying commission. The Court did not import section 17's broader express list into the fund rule, nor decide a 1952-Act basic-wages claim.

Recognition also has an institutional consequence: an assessing authority's route is referral for withdrawal, rather than treating continuing recognition as nonexistent. That does not dispense with other applicable deduction conditions, payment rules or later statutory amendments.

A bounded later check of Continental Construction Ltd. (15 January 1992) confirms a direct citation to Gestetner when observing that commission has different meanings in different contexts. Its section 80-O discussion does not certify Gestetner's present provident-fund application or convert all commission into salary.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench, full appeal group and reporter/judicial reference discrepancy

Source url: [Open cited source](#)

Pdf pages: 1; 4; 6

Paragraphs: SCR 788 heading; 791 B–E; 793 G

Source role: reported metadata and judicial text

2.

Topic: Employment contract, fund recognition, years and disallowed contributions

Source url: [Open cited source](#)

Pdf pages: 4; 5; 8

Paragraphs: SCR 791 F–792 C; 795 A–D

Source role: judicial text

3.

Topic: Questions, appellate route and procedural history

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7

Paragraphs: SCR 792 D–794 F

Source role: judicial text

4.

Topic: Applicable definition and historical contribution conditions

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12

Paragraphs: SCR 797 E–799 C

Source role: judicial text

5.

Topic: Remuneration analysis and contractual commission holding

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15

Paragraphs: SCR 799 C–802 E

Source role: judicial text

6.

Topic: Circular and different provident-fund legislation distinguished

Source url: [Open cited source](#)

Pdf pages: 15; 16

Paragraphs: SCR 802 F–803 D

Source role: judicial text

7.

Topic: Recognition, withdrawal mechanism, both answers and costs

Source url: [Open cited source](#)

Pdf pages: 16; 17

Paragraphs: SCR 803 E–804 F

Source role: judicial text

8.

Topic: Bounded later citation: commission depends on context

Source url: [Open cited source](#)

Pdf pages: 34; 35; 36; 37

Paragraphs: SCR 90–93, particularly 92 D–E

Source role: bounded later judicial comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

V.D. Tulzapurkar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (historical section 36(1)(iv) and Part A of the Fourth Schedule)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

1922 Act provident-fund recognition granted in 1937 and continued into the relevant 1961-Act years; judicial discussion establishes continuity without needing a new inference from the source year; Circular No. 6, 16 January 1941 (discussed; source prints continuation under section 297(k)); Circular No. 80, 4 March 1972 under section 40(c)(iii) (High Court treatment recorded; not the basis of the Supreme Court's construction); Employees' Provident Funds Act, 1952 sections 2(b) and 6 (Bridge & Roof distinguished, not adjudicated under that Act)

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 17 PDF pages; SHA-256

8864b1b73f9ac373737d2f1d61b94a13efd72691b16de27fc486f939a9ada83f. Original bytes preserved.

Judicial body begins physical page 4/SCR 791 C and ends page 17/SCR 804 F. Pages 1–3 and opening page 4 are reporter material; full appellate metadata appears on page 4. No neighbouring judgment.

Open cited source rendition

Actual judgment date is 14 December 1978, despite the 1979 SCR volume.; Complete Supreme Court docket is Civil Appeal Nos. 565–570 of 1978, not just No. 565.; Reporter appeal metadata on page 4 says Income Tax Reference No. 456 of 1969, but the judicial opening on page 4 and explanation on page 6 both say No. 156 of 1969. The other references are Nos. 398–400 of 1969. Do not silently harmonise the reporter discrepancy.; Source describes continuation of the 1941 circular as section 297(k); no corrected subclause is substituted without independent statutory verification.; Section 17 is contrasted, while rule 2(h) is actually applied. Historical employee deduction discussion under section 80C is not a present employee-contribution conclusion.; Continued recognition does not eliminate the Commissioner's power to withdraw recognition under rule 3.

Judicial opening and facts expressly identify all three AYs; corresponding previous years ended 31 December 1961, 1962 and 1963.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no present-law certification. Identify the applicable statutory version and procedural route separately.

LATER TREATMENT

Source checked 2026-10-05. not_verified. Bounded direct later citation only: Continental Construction Ltd., 15 January 1992, physical pages 34–37, specifically page 36/SCR 92 D–E. It cites Gestetner in the salary context while interpreting section 80-O. No comprehensive later-treatment search, present provident-fund regime, or 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 17

SHA-256: 8864b1b73f9ac373737d2f1d61b94a13efd72691b16de27fc486f939a9ada83f

later judgment bounded comparison - PDF pages: 60

SHA-256: adbaf9eaba9b156c7f70ef8525e5e2c4182bbd3c2940a2366767b14408cd8769

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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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