

K.P. Varghese v. The Income-tax Officer, Ernakulam, and another

Civil Appeal No. 412(NT) of 1973

[1982] 1 SCR 629 | 1981-09-04

Whether historical section 52(2) required proof that the assessee had actually received more consideration than declared, in addition to the fair-market-value excess of at least 15%, and whether reassessment could stand where the sale consideration was admittedly honestly disclosed.

52(2) (historical fair-market-value computation provision) | 52(1) (connected-person and avoidance context) | 45 and 48 (charge and capital-gains computation) | 119 (the two CBDT circulars considered by the Court) | 148 (reassessment notice and consequential jurisdiction) | 2(24), 4, 5 and 14 (statutory setting)

Two-judge bench | P.N. Bhagwati, J. | E.S. Venkataramiah, J.

Assessment years: 1966-67

Omitted section 52(2): actual understatement, not merely a low price

This ruling concerns historical section 52(2), whose omission from 1 April 1988 is recorded in the government-hosted statutory compilation. The Revenue had to prove actual understatement as well as the separate 15% valuation difference; reasonable inference could prove concealment, and its exact amount then need not be proved. Do not turn the judgment into a current 15% tolerance, a universal capital-gains or stamp-duty-value rule, or a rule that every circular overrides statute. Comprehensive later treatment, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

The assessee bought a house in Ernakulam in 1958 for Rs.16,500 and sold it on 25 December 1965 to his daughter-in-law and five children for the same amount. The original assessment for AY 1966-67 included no capital gain. A notice under section 148 followed on 4 April 1968. In a letter dated 4 March 1969, the Income-tax Officer proposed a fair market value of Rs.65,000 and taxation of the Rs.48,500 difference as capital gains; he then made the reassessment over the assessee's objections (physical page 8/SCR 636).

The Revenue did not allege that the assessee actually received more than Rs.16,500. Honesty of the transaction and correct disclosure of its full consideration were common ground and findings of the tax authorities. The Officer relied on section 52(2), arguing that a market-value excess of at least 15% sufficed. A single judge of the Kerala High Court quashed the reassessment. By a two-to-one decision, its Full Bench reversed that result. The assessee appealed by certificate from the Full Bench judgment of 5 July 1972 in Writ Appeal No.127 of 1970 (physical pages 7-10 and 29).

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

02 DISCUSSION BY THE HON'BLE COURT

The statutory text reproduced at physical page 11/SCR 639 matters. Historical section 52(2) used a fair-market-value excess of not less than 15% of the declared consideration and required previous approval of the Inspecting Assistant Commissioner before substitution. Section 52(1) addressed connected transferees and an object of avoiding or reducing capital-gains liability. The Court read subsection (2) as extending the anti-understatement mechanism beyond subsection (1)'s restricted class, not as taxing every honest sale below market value (physical pages 10–16).

A literal market-value-only reading would reach bona fide transactions, including delayed completion of an earlier sale agreement after prices had risen. The Court used the statutory setting, the mischief addressed, the Finance Minister's explanation when moving the amendment, the marginal note and the word "declared" to identify the required understatement. The mover's speech was used to identify the mischief and purpose; the marginal note was a clue rather than a means of overriding clear language. These were contextual interpretive aids, not an unrestricted licence to rewrite legislation (physical pages 12–20).

The CBDT circulars of 7 July 1964 and 14 January 1974 confirmed that honest transactions with correctly disclosed consideration were outside subsection (2). The Court treated them both as contemporaneous administrative exposition and as binding on the Revenue under section 119 in administering this provision, even on an alternative construction less favourable to the assessee. Its discussion of the two specific circulars must be retained in that statutory and historical setting (physical pages 20–24).

There were two independent conditions: the required 15% market-value difference and actual understatement, meaning receipt of more consideration than declared. The Revenue had to establish both. The first did not itself prove or create a necessary presumption of the second. The percentage condition screened out marginal valuation differences; it did not reverse the burden. Proof of concealment could rest on facts and circumstances supporting a reasonable inference, so direct evidence of an extra payment was not invariably necessary. Once understatement and the statutory difference were established, the Revenue did not also have to prove the precise concealed amount: the provision supplied the statutory fair-market-value measure (physical pages 25–27 and 29).

The Court read section 52 as a computation provision with sections 45 and 48. Its reasoning also considered the then Gift-tax Act scheme and constitutional concerns under Entry 82 and historical Article 19(1)(f), preferring a construction that preserved validity. It did not strike section 52(2) down. Here the admitted truthful disclosure meant that subsection (2) could not apply, leaving no reason to believe in escaped income on the proposed basis; the resulting reassessment was without jurisdiction (physical pages 27–29).

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

03 JUDICIAL DECISION

The appeal was allowed. The Full Bench order was set aside, and the single-judge order allowing the writ petition and quashing the reassessment was restored. The Revenue was directed to pay the assessee's costs throughout (physical pages 29–30/SCR 657 H–658 A).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Appeal allowed; Full Bench order set aside; writ relief quashing reassessment restored; Revenue to pay the assessee's costs throughout

Final interpretation of historical section 52(2), with consequential reassessment-jurisdiction relief

Actual understatement and the historical 15% condition are separate. Reasonable inferential proof is permitted; exact quantification of the concealed receipt is unnecessary once the conditions hold. This does not decide later stamp-value deeming provisions.

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

05 AKHB REVIEW POINT

Distinguish a low price from a false disclosure of the price actually received. For the provision decided here, a valuation gap was necessary but insufficient. Equally, the case should not be presented as requiring direct evidence of a precise additional payment: reasonable inference could establish concealment, and the statute then supplied the measure.

A bounded later reading of Shivakami Co. (18 March 1986), physical pages 7–9, directly applies K.P. Varghese's distinction between selling at an undervalue and understating consideration, in that later case's 1922 Act section 12B(2) setting. This is a limited citing-case check, not a complete history of treatment.

The government-hosted 2011 statutory compilation records section 52's omission by the Finance Act, 1987 with effect from 1 April 1988, and separately displays a later section 50C stamp-value deeming scheme (physical pages 362–363). Accordingly this historical holding is not a universal current capital-gains rule, a present 15% tolerance, or an answer to a section 50C dispute. The constitutional and circular discussions also require their own applicable-law and later-treatment checks.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, actual date and appeal by certificate

Source url: [Open cited source](#)

Pdf pages: 1; 7; 8

Paragraphs: SCR 629 heading; 635 C–H; 636 A

Source role: reported metadata and judicial text

2.

Topic: Transfer, AY, reassessment and High Court division

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10

Paragraphs: SCR 636 B–638 B

Source role: judicial text

3.

Topic: Actual historical statutory text and previous approval

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR 638 C–639 F

Source role: judicial text

4.

Topic: Literal absurdity, statutory purpose, mover's speech and contextual aids

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16; 17; 18; 19; 20

Paragraphs: SCR 640–648 B

Source role: judicial text

5.

Topic: Specific CBDT circulars: exposition and Revenue binding effect

Source url: [Open cited source](#)

Pdf pages: 20; 21; 22; 23; 24

Paragraphs: SCR 648 C–652 F

Source role: judicial text

6.

Topic: Independent conditions, burden, percentage safeguard and no exact-quantum requirement

Source url: [Open cited source](#)

Pdf pages: 25; 26; 27; 29

Paragraphs: SCR 653–655; 657 B–D

Source role: judicial text

7.

Topic: Computation, Gift-tax and constitutional-avoidance reasoning

Source url: [Open cited source](#)

Pdf pages: 27; 28; 29

Paragraphs: SCR 655 D–657 A

Source role: judicial text

8.

Topic: Honest-disclosure finding, lack of jurisdiction, exact relief and costs

Source url: [Open cited source](#)

Pdf pages: 29; 30

Paragraphs: SCR 657 D–658 A

Source role: judicial text

9.

Topic: Later direct application in Shivakami's 1922-law setting

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: SCR 887 C–889 H

Source role: bounded later judicial treatment

10.

Topic: Later statutory section 52 omission and distinct section 50C regime

Source url: [Open cited source](#)

Pdf pages: 362; 363

Paragraphs: Printed pages 1.321–1.322; section 50C and section 52 omission entry

Source role: bounded later statutory comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

P.N. Bhagwati, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (historical section 52(2), subsequently omitted)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Finance Act, 1964, section 13 (insertion of section 52(2), as described in the judgment); Gift-tax Act, 1958 (contextual coordination, not an adjudicated gift-tax assessment); Constitution of India: Seventh Schedule, List I, Entry 82 and historical Article 19(1)(f) (constitutional-avoidance reasoning)

SOURCE & VERIFICATION

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

Identified source rendition: 30 PDF pages; SHA-256

936e52007a0ba382a881483842272b6c4a9b92bd7c1d3650793f5fdbcb1ba376f. Original bytes preserved.

Unnumbered judicial body begins physical page 7/SCR 635 H and ends physical page 30/SCR 658 A. Pages 1–6 and opening page 7 are reporter headnotes, followed by appellate metadata and appearances. No neighbouring judgment.

[Open cited source rendition](#)

The decision is dated 4 September 1981 on the original report heading, despite the 1982 report and asset year.; The Full Bench majority and dissent belong to the High Court; the Supreme Court judgment is delivered for its two-judge bench without a separate dissent.; The Revenue's actual-receipt burden can be discharged inferentially; it is not a requirement always to produce direct evidence or establish the exact suppressed amount.; The statutory quotation includes previous Inspecting Assistant Commissioner approval. Approval compliance was not independently adjudicated in this appeal.; The Court does not invalidate section 52(2), decide a gift-tax assessment or declare a universal constitutional rule against every later deemed-value provision.; Some scanned lines at SCR 645 and 648 are degraded. The reasoning and circular effect are independently clear in the adjacent judicial passages; reporter headnote slips and OCR errors are not treated as statutory text.; Shivakami is a bounded later citing-case check in a 1922-law setting. The 2011 compilation is not an original amending Gazette or present-law certification; section 50C is not mapped automatically to section 52(2).

Judicial text identifies AY 1966-67, corresponding accounting year calendar 1965, and the transfer on 25 December 1965. The 1982 report/asset year is not the decision year.

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 2026-10-04. not_verified. Bounded direct citing-case check: Shivakami Co., cover page 1 and judicial physical pages 7–9/SCR 887–889 only. Bounded statutory comparison: government-hosted 2011 compilation, physical pages 362–363, section 52 omission entry and separate section 50C text; compilation editorial amendment history distinguished. No comprehensive citation history, current-law verification or 2025 mapping.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 30](#)

SHA-256: 936e52007a0ba382a881483842272b6c4a9b92bd7c1d3650793f5fdbcb1ba376f

[later judgment bounded check - PDF pages: 10](#)

SHA-256: 4a11524cf7fefbbf415493dbd2f697d65abd3bf16e4a86515cbc4860809ae08c

[official hosted statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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