

Shri Sunil Siddharthbhai etc. v. Commissioner of Income Tax, Ahmedabad etc.

Civil Appeal No. 1841 of 1981 / Civil Appeal No. 1777 of 1981

[1985] Supp. (3) SCR 102 | 1985-09-27

Whether contributing personally owned shares to partnership capital is a transfer, and, separately, whether the consideration and profit can support the capital-gains charge under the then sections 45 and 48.

2(47) | 45 | 48

Three-judge bench | P.N. Bhagwati, CJI | R.S. Pathak, J. | Amarendra Nath Sen, J.

Assessment years: 1974-75, 1973-74

Transfer found; old computation result is conditional and later law differs

This is a transfer holding with a pre-section 45(3) no-charge result, expressly dependent on genuine business contributions and subject to sham/device scrutiny. Finance Act, 1987 introduced section 45(3), effective 1 April 1988, with a deemed-consideration rule; do not carry the old result into later periods automatically. The report has unresolved lead-appeal value reversals and Rajka date/share-count differences. No general registration dispensation, comprehensive later treatment, current-law certification or 2025 mapping is supplied.

01 FACTS OF THE CASE

The appeals concerned partners who contributed shares held as personal capital assets to partnership firms. In CA 1841/1981, involving Suvas Trading Company and AY 1974-75, the Commissioner used revision jurisdiction after the assessment did not charge the asserted gain. The Tribunal treated the contribution as a transfer but found no taxable capital gain. The report contains an unresolved numerical reversal: the narrative gives book value Rs.1,60,279, market value Rs.1,49,819 and a Rs.10,460 debit, while the referred question gives acquisition cost Rs.1,49,819 and market value Rs.1,60,279. No corrected quantum is assumed in this note (SCR 109 D-110 C).

In CA 1777/1981, the assessee and his wife were partners in Rajka. On 22 March 1973 he introduced two shareholdings costing Rs.1,81,106, and the firm credited his capital account with Rs.4,75,136. For AY 1973-74 the Income-tax Officer assessed the Rs.2,94,030 difference as capital gain. The first appeal failed, but the Tribunal held there was no transfer and therefore did not examine consideration. Both references were decided for Revenue by the Gujarat High Court's common judgment dated 30 April/1 and 4 May 1981 (SCR 110 D-111 G).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court accepted that a partnership firm is not a separate legal entity for the property-law proposition under consideration and that contributing an asset is not a sale. Those points did not answer the wider statutory transfer question. Section 2(47) was inclusive, not exhaustive. Reducing exclusive ownership of a personal asset to a shared interest with the other partners involved a transfer, despite the contributor retaining an abridged interest. The Madras decisions in Abdul Khader Motor and Lorry Service and H. Rajan/H. Kannan were not accepted insofar as their no-transfer conclusion treated the enumerated definition as exhaustive (SCR 113 A-114 H and 118 A-B).

The Court explained the character of partnership property by reference to Addanki Narayanappa. During the firm's subsistence a partner cannot isolate or dispose of a particular item as exclusively his own; his rights include sharing profits and, on dissolution or retirement, realising his share of net assets after liabilities. The dissolution/retirement authorities were distinguished: realisation of an existing shared interest is different from introducing an exclusively owned asset into common partnership ownership. The Registration Act argument likewise did not negate a transfer: authorities dispensing with a written transfer instrument or registration rested on intention and agreement, not on absence of any transfer. The actual assets here were shares, and no general conveyancing or registration dispensation is decided for every immovable-property transaction (SCR 114 G-117 H).

The second step was independent. Applying B.C. Srinivasa Setty's integrated charging-and-computation approach, the Court held that the consideration received by the contributing partner could not be evaluated as section 48 required. His consideration comprised profit-sharing and a future share in net assets; future liabilities, losses and the date of exit could not then be ascertained. A capital-account entry was a notional inter-partner adjustment, not the true presently computable consideration or a debt payable by the firm. Accordingly the computation machinery could not operate (SCR 118 C-119 C).

The Court also concluded that no real income or gain accrued in the commercial sense. The entry could be exhausted by subsequent losses, even during the same accounting year. Revenue's objection that this legal aspect had not been referred or previously argued was rejected because it was fundamental to, and within, the questions referred. These were reasons for absence of a taxable capital gain under the then scheme, not a reversal of the holding that a transfer occurred (SCR 119 D-121 C).

Both answers expressly rested on genuine firms and genuine business capital contributions. Authorities could examine a sham partnership and could also scrutinise an asset contribution to an otherwise genuine firm if it was a device to convert the asset into money substantially available to the contributor while avoiding capital-gains tax. Relevant indicators included a family-only firm, rapid subsequent sale, absence of substantial business and lack of a genuine need for the capital; the judgment did not treat any single indicator as automatically conclusive (SCR 121 D-122 A).

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

03 JUDICIAL DECISION

The common answers were: (1) the contribution of shares to partnership capital was a transfer; (2) on the assumed genuine transactions, no consideration within section 48 and no profit or gain for section 45 arose. Both answers were expressly subject to the Court's genuine-transaction/device reservations. Civil Appeals 1841 and 1777 of 1981 were partly allowed, with no order as to costs. The operative order does not separately direct a remand or quantify a final assessment (SCR 122 B-E).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on capital-gains charge; Revenue on existence of transfer

Both appeals partly allowed; no order as to costs

Transfer established, but then computation/real-gain requirements not satisfied on the stated assumptions

Not a no-transfer holding or unconditional exemption. Sham/device scrutiny expressly preserved. Subsequent section 45(3) materially limits automatic later-period use.

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

05 AKHB REVIEW POINT

Keep the two legal steps separate: an introduction of personal property into partnership ownership can be a transfer even where the then charging/computation system yields no taxable gain. Record the nature of the asset, partnership agreement, capital entry, subsequent disposal, use of funds and real business need. The judgment's stated assumptions must be tested; it does not validate a tax-free conversion scheme or equate every family partnership with a sham.

A bounded check of the Income Tax Department's 1993-version section 45(3) and footnote 3 confirms a later provision inserted by the Finance Act, 1987 with effect from 1 April 1988. It charges gains on a person's capital-asset contribution or other transfer to a qualifying firm, association or body in which that person is or becomes a partner/member, and deems the amount recorded in that entity's books to be consideration for section 48. That later rule directly addresses the computation obstacle discussed here. The 1985 no-charge outcome therefore cannot automatically govern transactions falling under it. This check establishes a historical legislative change only; it does not certify current-law interactions, comprehensive later judicial treatment or 2025 mapping.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and exact two-appeal grouping

Source url: [Open cited source](#)

Pdf pages: 1; 7; 8

Paragraphs: SCR 102 A-B; 108 D-H; 109 A-C

Source role: reported metadata and judicial text

2.

Topic: Lead appeal facts and conflicting referred values

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR 109 D-110 C

Source role: judicial text

3.

Topic: Rajka facts, amounts, year and references

Source url: [Open cited source](#)

Pdf pages: 9; 10

Paragraphs: SCR 110 D-111 G

Source role: judicial text

4.

Topic: Headnote/body inconsistencies

Source url: [Open cited source](#)

Pdf pages: 2; 8; 9

Paragraphs: SCR 103 A-F versus 109 C and 110 D-G

Source role: editorial headnote and judicial text

5.

Topic: Then sections 45 and 48

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR 111 H-112 C

Source role: judicial text

6.

Topic: No sale does not mean no transfer; inclusive section 2(47)

Source url: [Open cited source](#)

Pdf pages: 12; 13

Paragraphs: SCR 113 A-114 H

Source role: judicial text

7.

Topic: Partnership property and dissolution distinction

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: SCR 115 A-117 E

Source role: judicial text

8.

Topic: Registration argument confined to absence of required instrument

Source url: [Open cited source](#)

Pdf pages: 16

Paragraphs: SCR 117 E-H

Source role: judicial text

9.

Topic: Transfer conclusion and computation obstacle

Source url: [Open cited source](#)

Pdf pages: 17; 18

Paragraphs: SCR 118 A-119 C

Source role: judicial text

10.

Topic: Real gain, capital entry and scope of reference

Source url: [Open cited source](#)

Pdf pages: 18; 19; 20

Paragraphs: SCR 119 D-121 C

Source role: judicial text

11.

Topic: Genuine-transaction assumptions and scrutiny indicators

Source url: [Open cited source](#)

Pdf pages: 20; 21

Paragraphs: SCR 121 D-122 A

Source role: judicial text

12.

Topic: Two conditional answers, partly allowed and no costs

Source url: [Open cited source](#)

Pdf pages: 21

Paragraphs: SCR 122 B-E

Source role: judicial text

13.

Topic: Bounded later legislative change; not part of the judgment

Source url: [Open cited source](#)

Provision: Section 45(3), official page labelled year 1993; footnote 3 records Finance Act, 1987 insertion effective 1 April 1988

Source role: later official statutory text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Revision jurisdiction (provision number not expressly stated in this judgment)

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.S. Pathak, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER STATUTORY CHANGE AND LIMITS OF THE CHECK

Status: verified limited

Source url: [Open cited source](#)

Source version: Income Tax Department, Income-tax Act, 1961, section 45, year 1993

Provisions read: 45(3); footnote 3

Finding: Capital-contribution charge and book-value deemed consideration inserted by Finance Act, 1987, effective 1 April 1988. This differs materially from the computation law applied to the 1973-74/1974-75 appeals.

Not claimed: No comprehensive later-treatment, current-law, section 45(4)/9B interaction or 2025 Act audit; the amendment is not described as retrospectively governing these appeals.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Partnership Act, 1932, section 14 and partnership-property principles; Registration Act, section 17(1)(b), discussed to explain why absence of a registrable instrument does not establish absence of a transfer; Income-tax Act, 1961, later section 45(3): bounded subsequent legislative check only, not part of the 1985 holding

INDIVIDUAL APPEAL GROUPS AND THEIR DISPOSITION

1.

Case numbers: Civil Appeal No. 1841 of 1981

Assessment years: 1974-75

Partnership: Suvas Trading Company

Origin: Gujarat High Court, Income Tax Reference No. 235 of 1980

Disposition: Partly allowed on the common two answers, subject to genuine-transaction reservations

Costs: No order as to costs

2.

Case numbers: Civil Appeal No. 1777 of 1981

Assessment years: 1973-74

Partnership: Rajka

Origin: Gujarat High Court, Income Tax Reference No. 34 of 1980

Disposition: Partly allowed on the common two answers, subject to genuine-transaction reservations

Costs: No order as to costs

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 21 PDF pages; SHA-256

f77a06ab92b7e2b400aecc0eeead21210ab9aec161ac53f7149bf152407424. Original bytes preserved.

Complete unnumbered judicial text begins at physical page 8/SCR 109 C (Pathak J) and ends page 21/SCR 122 D-E with the two answers expressly subject to the genuine-transaction reservations, appeals partly allowed and no order as to costs. Headnote and report metadata occupy pages 1-8 before the judicial opening. No separate opinion or adjacent judgment.

Open cited source rendition

Printed running header is [1985] SUPP.3 S.C.R.; no second appellant name inferred from external descriptions.

The lead narrative at SCR 109 E and its first referred question at SCR 110 B reverse the Rs.1,49,819/Rs.1,60,279 acquisition/market roles. The discrepancy is visible in the original report; no substituted amount or gain is calculated.; For Rajka the headnote says 24 February 1973 and 580 ordinary Ahmedabad-company shares (SCR 103), whereas the judicial narrative prints 25 February 1973 and 80 shares (SCR 110). The note uses the undisputed total cost, capital credit and disputed gain without repairing the share count.; The headnote describes special leave; the judicial opening at SCR 109 C says High Court certificate. The judicial account controls the route description.; No separate opinion appears. Editorial numbered holdings are not judicial paragraph numbers.; The Registration Act discussion concerns the no-transfer argument. It supplies no universal registration, title-transfer or stamp-duty exemption.; The later section 45(3) check is confined to the official 1993 statutory version and insertion footnote, not a current-law status certificate.

AY 1974-75 belongs to CA 1841/1981 and AY 1973-74 to CA 1777/1981. The judicial opening describes appeals by High Court certificate; the headnote's special-leave description is not adopted.

STATUTORY SCOPE

No automatic current-law application or Income-tax Act, 2025 mapping. Identify the governing period and operative statutory text independently.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, reviews, stays, reversals and judicial treatment have not been comprehensively checked. Any bounded later statutory check is separately identified; this is not a citator status certificate.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 21

SHA-256: f77a06ab92b7e2b400aecc0eeead21210ab9aec161ac53f7149bf152407424

later official statutory text

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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