

Commissioner of Income-tax, Bombay v. Italindia Cotton Co. (P) Ltd.

Civil Appeal No. 1520 (NT) of 1986

[1988] Supp. 2 SCR 814 | 1988-09-05

Whether the continuity-of-beneficial-voting-power condition and the no-tax-avoidance-purpose condition in historical section 79(a) and (b) operated alternatively or cumulatively, and whether the assessee's set-off was finally established.

79(a) and 79(b) (historical version before omission of clause (b)) | 70, 71 and 72 (Chapter VI context)

Two-judge bench | R.S. Pathak, C.J. | Mukharji, J.

Assessment years: 1963-64

Historical alternative omitted; final set-off unresolved

The ruling concerns former section 79(a) and (b). Clause (b), allowing the no-tax-avoidance-purpose route, and the connecting word or were omitted from 1 April 1989. The assessee won the interpretation issue, but the Tribunal still had to decide clause (b) facts before final set-off. Later judicial treatment, final proceedings below and present-law or 2025-Act mapping remain unverified.

01 FACTS OF THE CASE

Three groups controlled three private companies. During the accounting year ending 31 March 1963, the Chunilal Group acquired control of India Corporation (P) Ltd., the Babubhai Group acquired control of the assessee, and the Purushottam Group acquired control of International Cotton (P) Ltd. Italindia sought to carry forward its Rs. 12,172 loss for AY 1960-61 and set it off in AY 1963-64. The Income-tax Officer denied the claim because the requisite 51 per cent voting-power continuity was absent (physical pages 3–4).

The Appellate Assistant Commissioner took the view that the relevant shareholding change must also have been effected to avoid or reduce tax before the set-off could be denied. The Tribunal treated the two exceptions as independent. It appeared to have been admitted before the Tribunal that clause (a) was unavailable, but the Tribunal made no definite finding on clause (b). On the assessee's reference, the Bombay High Court upheld the alternative-conditions interpretation and said the Tribunal must decide the tax-avoidance-purpose issue before finally disposing of the set-off claim. Revenue appealed by special leave (physical pages 4–5).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court situated section 79 within Chapter VI's scheme for set-off and carry-forward of losses and set out the historical provision. For a company in which the public were not substantially interested, a change in shareholding triggered a restriction, subject either to continuity of beneficial ownership of shares carrying at least 51 per cent voting power at the relevant year-ends under clause (a), or to the Income-tax Officer's satisfaction that the change was not made to avoid or reduce tax under clause (b). The Court read the two conditions as alternatives. Satisfying either removed this particular statutory disqualification; both need not be satisfied together (physical pages 5–6).

The Court explained the anti-avoidance object by referring to acquisition of loss-bearing companies to shelter later profits. It also recognised that a control acquisition could have commercial purposes and need not be tax-motivated. Its approval of the alternative reading was reinforced by the Gujarat High Court's *Shri Subhalaxmi Mills* and the Madras High Court's *Saravanabhava Mills* decisions. This was statutory interpretation of the two-clause version; the Court did not itself find that *Italindia's* actual change lacked a tax-avoidance purpose (physical pages 6–7, read with pages 4–5).

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

03 JUDICIAL DECISION

The Court upheld the High Court's interpretation and dismissed Revenue's appeal with costs. Either historical clause (a) or historical clause (b) was sufficient to avoid section 79's disqualification. The High Court's requirement for the Tribunal to decide the unresolved clause (b) factual question remained operative; the Supreme Court did not finally grant the claimed set-off (physical pages 4–5 and 7).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on statutory interpretation; ultimate set-off remained dependent on the unresolved factual issue

Revenue's appeal dismissed with costs; High Court interpretation upheld

Final on alternative operation of historical clauses (a) and (b); factual entitlement under clause (b) not finally determined by the Supreme Court

No finding that *Italindia's* shareholding change was free of a tax-avoidance purpose, no final set-off computation, and no ruling that this omitted alternative survives in later statutory versions.

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

05 AKHB REVIEW POINT

Keep the interpretive victory separate from final entitlement. For this historical dispute, failure of the voting-power continuity test did not itself end the claim because the former clause (b) route remained available. The practical evidentiary task was to establish the purpose of the shareholding change before the Tribunal. The account of a commercial-control rationale in the Court's general reasoning is not a factual finding about this assessee.

Date the proposition carefully: the Department-hosted 2011 compilation at physical page 421 and its historical 1989 section 79 webpage record that the Finance Act, 1988 omitted both clause (b) and the connecting word or with effect from 1 April 1989. Consequently, this decision is not authority for an unrestricted later-year exception based solely on absence of tax-avoidance purpose. Apply the statutory version for the relevant year and separately verify any later exceptions. Comprehensive later judicial treatment, final proceedings below and any Income-tax Act, 2025 mapping remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, judicial beginning, reorganisation and loss

Source url: [Open cited source](#)

Pdf pages: 1; 3

Paragraphs: Unnumbered text; physical PDF page numbers

Source role: reported metadata and judicial text

2.

Topic: Procedural history and unresolved factual entitlement

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: Unnumbered text; physical PDF page numbers

Source role: judicial text

3.

Topic: Historical section 79 text and alternative conditions

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: Unnumbered text; physical PDF page numbers

Source role: judicial text

4.

Topic: Purpose, interpretive holding and dismissal with costs

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: Unnumbered text; physical PDF page numbers

Source role: judicial text

5.

Topic: Omission of former clause (b) and connecting or from 1 April 1989

Source url: [Open cited source](#)

Pdf pages: 421

Paragraphs: Section 79 and footnotes 23–26; printed page 1.380

Source role: bounded historical statutory text

6.

Topic: Historical clause (b) before omission and effective date

Source url: [Open cited source](#)

Paragraphs: Section 79 and footnotes 76–78, historical 1989 page

Source role: official hosted historical statutory page

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.S. Pathak, C.J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

ASSESSMENT-YEAR CONTEXT AND LIMITS

The set-off was claimed for AY 1963-64; the Rs. 12,172 loss arose in accounting year ending 31 March 1960, relevant to AY 1960-61. Shareholding changed during the accounting year ending 31 March 1963.

SOURCE & VERIFICATION

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

Identified source rendition: 7 PDF pages; SHA-256

9dc91d07667c27c197ee083b74e14627d8015c27ef3bcbb9b4fdb683d7872707. Original bytes preserved.

Judicial text starts at physical page 3 after the judgment-introduction line and continues through physical page 7; editorial headnote on pages 1–3 is distinguished. No adjoining judgment intrudes.

[Open cited source rendition](#)

The quoted section 79 is the historical version containing clause (b), not the later text after its omission from 1 April 1989.; Physical pages 4–5 expressly leave the no-tax-avoidance-purpose question for the Tribunal; the appeal dismissal must not be turned into a final factual entitlement to set-off.; The cover names the second judge as Mukharji, J.; that printed form is retained rather than presenting ingestion metadata as independently verified full-name evidence.; The judicial text states the reference was at the instance of the assessee. The apparent procedural peculiarity is preserved, not silently reversed.; The source has minor OCR distortions, including 51 appearing as S1; the material voting-power percentage, operative statutory word or, amount and final order were checked against the images.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. The bounded historical statutory check identifies the omission of former section 79(b) and the connecting word or from 1 April 1989.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial treatment and the Tribunal's eventual factual decision remain unverified. The later statutory omission was separately checked in the official-hosted historical sources identified below.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 7](#)

SHA-256: 9dc91d07667c27c197ee083b74e14627d8015c27ef3bcbb9b4fdb683d7872707

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[official department hosted historical statutory page](#)

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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