

Commissioner of Income Tax, Kanpur v. U.P. State Industrial Development Corporation

Civil Appeal Nos. 1739–1740 of 1981

[1997] 3 SCR 846 | 1997-04-11

Whether underwriting commission attributable to unsubscribed shares taken by the underwriter itself reduced their cost or was separately taxable income for those years.

261

Two-judge bench | S.C. Agrawal, J. | G.T. Nanavati, J.

Assessment years: 1970-71, 1971-72

Cost adjustment confined to shares actually taken by this underwriter

The commission at issue reduced the cost of unsubscribed shares taken and held as stock-in-trade; commission on publicly subscribed shares remained profit. Brokerage relief was not appealed. Correct commercial accounting operated only because no conflicting tax rule was shown. The source's inconsistent section 36 references occur in a quoted-case discussion, not the underwriting holding. No universal commission exemption, later-year computation or comprehensive later-treatment certification follows.

01 FACTS OF THE CASE

The assessee, wholly subscribed by the Uttar Pradesh Government, financed industrial enterprises and underwrote share issues. It earned commission and brokerage on publicly subscribed shares, but had to take any unsubscribed shares at face value under the financing terms. For those shares taken by itself and held as stock-in-trade, it reduced their cost by the attributable commission and brokerage instead of crediting those amounts separately to profit and loss (PDF pages 2–3/SCR 847–848).

For AY 1970-71 the report states underwriting commission of Rs 1,01,250 and brokerage of Rs 33,719, with Rs 12,535 offered as taxable income; for AY 1971-72 it states combined commission and brokerage of Rs 1,15,000, with none included as taxable income. The ITO added the receipts. The Appellate Assistant Commissioner accepted cost adjustment for brokerage, which the Revenue did not challenge, but taxed underwriting commission. The Tribunal accepted cost treatment of commission on self-taken shares and the High Court agreed. The Revenue's section 261 appeals concerned that question for these two years (PDF pages 2–5).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court recognised the underwriting contract as compensation for the risk of having to take shares not subscribed by the public. It examined the whole underwriting account and the Tribunal's finding that the assessee's treatment conformed to the relevant accounting principles. Commission on shares actually taken reduced their acquisition price in that transaction; commission on shares taken by the public was treated as profit. The Court did not declare every underwriting receipt non-taxable (PDF pages 3–6).

Ordinary commercial-accounting principles help determine profits so long as they do not conflict with an express statutory provision. Kedarnath Jute and Morvi Industries did not resolve this particular profit-measurement question against the assessee. The discussion of State Bank of Travancore's interest-suspense reasoning preserved the priority of statutory tax rules over incompatible book treatment; the dissent quoted there was not adopted as a new rule governing doubtful-interest income (PDF pages 6–8).

Here, the Tribunal found correct underwriting accounting and no contrary statutory rule, and Revenue identified none. The Court therefore agreed that the commission on shares left unsubscribed by the public and acquired by the assessee reduced their price rather than producing separate taxable profit in those years (PDF pages 8–9).

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

03 JUDICIAL DECISION

The Revenue appeals were dismissed without costs. The High Court's answer for the assessee was affirmed: the underwriting commission attributable to shares the assessee itself had to take was a reduction of their cost, not separately taxable income of the years in question (PDF page 9/SCR 854).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee Corporation

Revenue appeals dismissed; High Court answer affirmed; no costs

Final fact-linked treatment of underwriting commission on self-taken stock-in-trade shares

Brokerage relief had not been challenged by Revenue; commission on publicly subscribed shares remained a profit item. No universal book-entry supremacy or exemption for all underwriting receipts.

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

05 AKHB REVIEW POINT

Preserve the linkage between the underwriting obligation, the particular shares ultimately taken, and the amount allocated to their cost. A label such as commission does not end the inquiry into what profit the composite transaction generated. Equally, the decision rests on correct accounting and the absence of a conflicting tax provision, not on the taxpayer's unilateral choice of entries.

These were shares held as stock-in-trade in a historical underwriting arrangement, not a generic capital-investment cost ruling. The Court did not decide the eventual sale or valuation of those shares or calculate later profit. The earlier years mentioned in the High Court's grouped references are background, not additional years in these Supreme Court appeals. Recheck the governing statutory and accounting requirements for the actual year; comprehensive later treatment, later standards and 2025 Act mapping remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, two years, stock-in-trade shares, amounts and unchallenged brokerage relief

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Whole underwriting account and public/self-subscription distinction

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Accounting subject to statute; different contexts of cited authorities

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Application to self-taken shares and final dismissal

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR 853 F-H; 854 A-B

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.C. Agrawal, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

APPLICABLE HISTORICAL STATUTORY CONTEXT AND LIMITS

Adjudicated version: Income-tax Act, 1961, profit computation for AYs 1970-71 and 1971-72. The judgment does not number a substantive charging/computation section for its operative underwriting conclusion.

Express procedural section: Section 261 certificate appeals.

Other references: Companies Act 1956 section 76 appears as historical underwriting-commission background. Income-tax Act 1922 sections 10(2)(xv) and 4(1)(b)(i), and 1961 Act section 36 provisions, arise in discussions of other cases; they are not the present underwriting claims.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 9 PDF pages; SHA-256

e2f03b696076691286a16e4fba031a690325dce75cf492f269b89303e1c2bc84. Original bytes preserved.

Complete unnumbered judicial text on physical PDF pages 2–9; preceding text is reporter/headnote/appearance material. No adjacent judgment. All report pages also read.

Open cited source rendition

The actual judicial text says the shares were stock-in-trade; neither the government ownership nor the underwriting role justifies recasting them as capital investments.; Only AYs 1970-71 and 1971-72 concern these appeals. AYs 1965-66, 1966-67, 1967-68 and 1969-70 appear in the account of a separate High Court reference.; The Appellate Assistant Commissioner's brokerage relief was not challenged by Revenue. The referred appellate issue concerns underwriting commission, even though the factual receipts include both components.; Physical page 8 prints section 36(1)(iii) in its first State Bank of Travancore discussion and section 36(1)(vii) later on the same page; this visible source defect is not silently harmonised or used to create a bad-debt holding here.; The report calls the cited bank case State of Travancore; the contextual identification is State Bank of Travancore. The quoted dissent and majority are distinguished.; No Supreme Court recomputation of the precise surviving addition, share cost, tax or later realisation gain is supplied.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment has not been verified. Only the expressly identified bounded comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 9

SHA-256: e2f03b696076691286a16e4fba031a690325dce75cf492f269b89303e1c2bc84

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