

Commissioner of Income Tax, Delhi v. Stepwell Industries Ltd. Etc. Etc.

CA 1275/1992 and connected proceedings (full list below)

[1997] Supp 3 SCR 580 | 1997-08-27

Commissioner of Income Tax, Delhi v. Stepwell Industries Ltd. Etc. Etc.

35B(1)(b) (historical) | 256(1) and 256(2) | 40A(3) (question reproduced in CA 2324–2326/1995; no distinct merits reasoning)

Two-judge bench | Suhas C. Sen, J. | Saghir Ahmad, J. (as printed)

Assessment years: 1975-76 (CA1624–1625/1988 only), 1976-77 (CA1624–1625/1988 only)

Historical, appeal-specific rulings; editorial result conflict

CA 6411/1995 was allowed in the judicial order, despite a contradictory dismissed entry in the editorial footer. The lead appeal favours Revenue, but companion remands and dismissals differ; a remand grants no deduction. India-incurred costs and additional grounds require the source's specific factual and sub-clause limits. Section 35B was omitted from 1 April 1989, and no current-law or verified comprehensive later-treatment claim is made.

01 FACTS OF THE CASE

In the lead appeal, the assessee's goods were sold outside India through the State Trading Corporation. The Tribunal allowed weighted deduction for Rs 1,46,678 commission, and the High Court refused a section 256(2) reference. The assessee invoked section 35B(1)(b)(i) and (iv) (physical pages 1–2).

The omnibus source also deals with separate commission and general-expense claims, Indian middleman payments, internal transfers to foreign branches, claims first supported at Tribunal level and reference refusals. Only the middleman group, CA 1624–1625/1988, expressly states AYs 1975-76 and 1976-77. The facts and years of that group cannot be assigned to all Stepwell-captioned companions (physical pages 3–12).

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

02 DISCUSSION BY THE HON'BLE COURT

The taxpayer had to establish the actual expense and the particular statutory purpose for which it was incurred. Export sales or overseas activity alone did not establish entitlement. For the lead claimed publicity limb, an STC activity would need to be shown to have been undertaken for the assessee and its goods; STC's own branch or agency was not automatically the assessee's qualifying overseas establishment. The lead claim therefore failed (physical pages 1–2).

The Court expressly rejected both blanket allowance and blanket disallowance. Different historical sub-clauses had different territorial conditions. In the Indian-middleman group, the agent had found the assessee for the foreign buyer; the payment was sales commission, not expenditure for obtaining information about overseas markets. The relevant distribution/supply limb also did not cover that India-incurred expenditure (physical pages 3–5).

Several Tribunals had allowed whole amounts or proportions without examining nature, purpose and sub-clause. Those cases were set aside, often for a fresh opportunity to prove the claim. In CA 3975/1995, however, neither a claim nor expenditure particulars had been placed before the ITO/first appellate authority, and the Tribunal could not grant relief on assumed facts. The order invoked Gurjargravures; it is not expressed here as an unrestricted present-law prohibition on every additional legal ground (physical pages 5–9).

For CA 8044–8045/1995, the material finding was predominantly customs duty on the company's internal movement of goods to its own foreign branches. Whether an Indian or foreign branch paid did not change that character. In CA 8482/1995 the Revenue argued only the first, section 35B question, and relief was confined accordingly. The section 40A(3) question reproduced in CA 2324–2326/1995 received no distinct substantive interpretation (physical pages 6–7 and 10–11).

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

03 JUDICIAL DECISION

CA 1275/1992 was allowed and the question answered for Revenue. Several companion orders were set aside and remitted for evidence-specific Tribunal consideration; other appeals were simply dismissed or had their allowances reversed without an express fresh remand. The nineteen separately headed groups and their different results are set out below. In particular, the operative judicial paragraph allows CA 6411/1995: the contrary dismissed entry in the editorial result list is not the Court's operative direction (physical pages 9 and 12).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Lead appeal for Revenue; companion results differ and include factual remands and dismissals

Nineteen separately headed groups; individual judicial orders control

Lead and specific claims rejected; several other claims remain to be established on remand

No blanket rule that all intermediary commissions qualify or fail; no new merits holding inferred from bare dismissals or unargued questions.

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

05 AKHB REVIEW POINT

An expense label is only a starting point. Reconstruct the actual activity, the party served, the payment evidence and the applicable statutory sub-clause. Separate market intelligence from a commission for a completed sale, and an assessee's own overseas facility from the intermediary's business infrastructure. Match the precise territorial restriction for the assessment year instead of turning this order into a universal bar on every expense incurred in India.

The additional-claim discussion rests on absent factual particulars and an allowance made on assumptions. It should not be used as a comprehensive statement of later appellate jurisdiction without checking later authorities. Likewise, a Tribunal remand merely permits proof; it does not grant the deduction. The operative CA 6411/1995 allowance of the appeal must prevail over the contradictory editorial footer.

Section 35B was omitted with effect from 1 April 1989 under the checked Department omission record. The Department's immediately-pre-omission text also contains the expenditure-before-1-March-1983 limit and omits several earlier sub-clauses. Neither that last version nor the historical one-and-one-third multiplier may be automatically carried into a different year or present law.

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

APPEAL AND PROCEEDING NUMBERS

CA 1275/1992 / CA 3280/1995 / CA 1465/1981 / CA 1466/1981 / CA 1624–1625/1988 / CA 2365/1994 / CA 9105/1994 / CA 2324–2326/1995 / CA 3200/1995 / CA 3201/1995 / CA 3975/1995 / CA 4106/1995 / CA 6411/1995 / CA 6715/1995 / CA 6941/1995 / CA 8044–8045/1995 / CA 8482/1995 / CA 8790/1995 / CA 9835/1995 / CA 2293/1996

DETAILED DISPOSITION AND CONNECTED GROUPS**Appeal groups**

1.

Case numbers: CA 1275/1992

Pdf pages: 1; 2

Disposition: Allowed; question treated as referred and answered in the negative for Revenue; no costs

Scope: Rs 1,46,678 commission connected with STC export sales not shown to satisfy the claimed sub-clauses (i)/(iv).

2.

Case numbers: CA 3280/1995

Pdf pages: 3

Disposition: Allowed; High Court and Tribunal orders set aside; Tribunal remand

Scope: Rs 3,10,750 commission to Singh & Co. and HREC (as printed); no blanket allowance or disallowance, opportunity to establish facts.

3.

Case numbers: CA 1465/1981; CA 1466/1981

Pdf pages: 4

Disposition: Appeals dismissed

Scope: No reasons stated.

4.

Case numbers: CA 1624–1625/1988

Pdf pages: 4; 5

Disposition: Appeals dismissed; no costs

Scope: AYs 1975-76/1976-77; Indian commission to a middleman locating the assessee for the foreign buyer was not qualifying market information; India-incurred selling cost failed the invoked sub-clause (iii).

5.

Case numbers: CA 2365/1994

Pdf pages: 5

Disposition: Allowed; High Court and Tribunal orders set aside; Tribunal remand; no costs

Scope: Listed ECGC/HHEC, advertisement, Olympiad registration, directors/postage/telegrams and packing-credit interest claims require evidence and sub-clause linkage.

6.

Case numbers: CA 9105/1994

Pdf pages: 6

Disposition: Allowed; orders set aside; Tribunal remand; no costs

Scope: Fresh opportunity to establish nature of expenses and relevant sub-clause.

7.

Case numbers: CA 2324–2326/1995

Pdf pages: 6; 7

Disposition: Appeals allowed; orders set aside; Tribunal to examine afresh; no costs

Scope: STC service charges and proportional expenses revisited; a section 40A(3) question is also reproduced but separately unresolved by any stated merits reasoning.

8.

Case numbers: CA 3200/1995

Pdf pages: 7; 8

Disposition: Allowed; orders set aside; Tribunal remand; no costs

Scope: Fresh factual and sub-clause examination.

9.

Case numbers: CA 3201/1995

Pdf pages: 8

Disposition: Allowed; orders set aside

Scope: Assessee may satisfy Tribunal with particulars establishing the appropriate sub-clause.

10.

Case numbers: CA 3975/1995

Pdf pages: 8; 9

Disposition: Allowed; Tribunal decision set aside; no costs

Scope: Additional claims unsupported by particulars before ITO or first appellate authority could not be allowed on assumed facts; no fresh remand expressly ordered.

11.

Case numbers: CA 4106/1995

Pdf pages: 9

Disposition: Dismissed; no costs

Scope: No reasons stated.

12.

Case numbers: CA 6411/1995

Pdf pages: 9

Disposition: Allowed; High Court and Tribunal orders set aside

Scope: Judicial order says allowed. The editorial footer at physical page 12 incorrectly lists dismissed; no express remand or costs order in this paragraph.

13.

Case numbers: CA 6715/1995

Pdf pages: 9; 10

Disposition: Allowed; orders set aside; Tribunal remand; no costs

Scope: Rs 29,746 described as export-agency commission to ECGC; question's changed wording did not justify refusal to refer.

14.

Case numbers: CA 6941/1995

Pdf pages: 10

Disposition: Disposed of; High Court and Tribunal orders set aside; no costs

Scope: Earlier principles applied; no separate detailed remand direction stated.

15.

Case numbers: CA 8044–8045/1995

Pdf pages: 10

Disposition: Allowed; High Court and Tribunal orders set aside; no costs

Scope: Customs-duty expenditure predominantly arose on internal transfers of the company's goods to its own foreign branches; identity of branch paying duty did not alter that finding.

16.

Case numbers: CA 8482/1995

Pdf pages: 11

Disposition: Allowed only to extent of section 35B question 1; orders set aside to that extent; no costs

Scope: Revenue argued no other question; unsupported broad/proportionate expense allowance reversed.

17.

Case numbers: CA 8790/1995

Pdf pages: 11; 12

Disposition: Disposed of; orders set aside; Tribunal remand; no costs

Scope: STC/HHEC commission to be considered on proof of facts and relevant sub-clauses.

18.

Case numbers: CA 9835/1995

Pdf pages: 12

Disposition: Disposed of; orders set aside; Tribunal to examine afresh; no costs

Scope: Opportunity for assessee to establish eligible activities.

19.

Case numbers: CA 2293/1996

Pdf pages: 12

Disposition: Dismissed

Scope: No reasons or costs direction stated.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Lead identity, STC commission and answer for Revenue

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: No blanket treatment and Indian-middleman claims

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Proportionate expense remands and section 40A(3) question boundary

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7; 8

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Unsupported additional claims and CA 6411 judicial result

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: ECGC reference, internal-branch customs duty and partial appeal

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11

Paragraphs: Unnumbered judicial text

Source role: judicial text

6.

Topic: Final remands, bare dismissal and inconsistent editorial list

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text and editorial discrepancy

7.

Topic: Historical omission of section 35B

Source url: [Open cited source](#)

Pdf pages: 268

Paragraphs: Section 35B omission record and footnote 71

Source role: bounded historical statutory text

8.

Topic: Immediately-pre-omission expenditure cutoff and statutory version boundary

Source url: [Open cited source](#)

Paragraphs: Section 35B omission note and historical subsection (1)(a)/clause (b)

Source role: bounded historical statutory text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Order of the Court; no individual author stated

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

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

Identified source rendition: 12 PDF pages; SHA-256

20d9a213a11b1d4e5d8a41db053cd6815ba7521dfa141d823892e5b2155d94d5. Original bytes preserved.

Complete unnumbered judicial text, physical pages 1–12/SCR 580–591; nineteen separately headed appeal groups read through, excluding the inconsistent editorial result list as a substitute for judicial orders.

[Open cited source rendition](#)

Physical page 9 expressly allows CA 6411/1995; physical page 12's editorial result list says dismissed. Both images were checked. The judicial order controls and the discrepancy remains visible.; The source has nineteen separately headed groups; caption, taxpayer identity, expenditure and assessment year are not assumed common to every group.; CA 3280/1995 prints the payee as HREC, unlike HHEC elsewhere. This note preserves the source spelling rather than silently assuming identity.; Page 3 first distinguishes territorial requirements across sub-clauses, but then contains the awkward sentence that expenditure may not be incurred in India; this is not expanded into a general territorial test.; CA 2324–2326/1995 introduces two questions but reproduces multiple RA questions, including section 40A(3). No separate cash-payment threshold holding is inferred from its predominantly section 35B reasoning.; CA 3975/1995 is not treated as a universal modern restriction on Tribunal additional grounds, and CA 8482/1995 is confined to the sole question argued.; The list of sub-clauses at physical page 2 is not a complete reconstructed historical statute; exact year-specific wording must be checked separately.; Historical multiplier and quoted amounts are not current deduction or payment limits; comprehensive later treatment is unverified.

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 statutory checks are claimed; no current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS[reported judgment - PDF pages: 12](#)

SHA-256: 20d9a213a11b1d4e5d8a41db053cd6815ba7521dfa141d823892e5b2155d94d5

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[official department hosted historical 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.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.