

Dalmia Cement Ltd., Rajasthan v. Commissioner of Income Tax, New Delhi

Civil Appeal Nos. 4632–4633 of 1992

[1999] 2 SCR 735 | 1999-04-16

Whether profits from two Pakistan cement factories for the two pre-completion accounting periods belonged for tax purposes to the seller, despite the completed sale and the agreement allocating post-30 September 1962 profits and losses to the buyer.

28 (reporter classification) | 60 | 63

Two-judge bench | M. Srinivasan, J. | Umesh C. Banerjee, J.

Assessment years: 1964-65, 1965-66

Completed sale and both-year disposition are essential

The result rests on these asset-sale agreements, their profit allocation and actual completion on 30 September 1964. It is not a rule that any agreement diverts income or defeats section 60, nor that an uncompleted sale always reallocates earlier profits. Both AY 1964-65 and AY 1965-66 and both appeals were decided for the assessee despite singular reporter wording. Consequential lawful steps were directed, without a quantified refund or capital-gains recomputation. Comprehensive later treatment and present-law mapping remain unverified.

01 FACTS OF THE CASE

Dalmia owned two cement factories in Pakistan and agreed on 24 July 1962 to sell its Pakistan properties and assets to Maneckji. The supplemental agreement of 2 November 1962 provided that, if the sale was completed, profits and losses after 30 September 1962 would be for his account; operating control remained with Dalmia until transfer. The completion period was extended by agreement, and the sale deed transferring the rights to Pakistan Progressive Cement Industry was executed on 30 September 1964 (physical pages 5–8).

The questions concerned AY 1964-65 for operations from 1 October 1962 to 30 September 1963 and AY 1965-66 for operations from 1 October 1963 to 30 September 1964. Neither original return included those factory profits. The original returned incomes were Rs 24,28,675 and Rs 24,58,314; the revised figures were Rs 1,40,852 and a loss of Rs 2,45,786 respectively. The source describes purchase-price interest included originally and removed on revision for non-receipt. The AO nevertheless included the factory profits; the AAC, Tribunal and High Court sustained that treatment (physical pages 4–5).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court considered the completed transaction and the agreements together. The stipulated effective date was 30 September 1962, and the sale had actually completed by the relevant assessment stage. Continued physical operating control did not entitle the seller to keep the profits allocated to the buyer. Its discussion of ascertainment at the accounting-year end particularly addressed AY 1965-66, while the final answers covered both referred years (physical pages 8–10 and 12).

Applying the distinction between diversion before income reaches an assessee and application of the assessee's own income afterward, the Court held that the profits stood diverted by overriding title. It also rejected the High Court's section 60 analysis: that provision concerned transfer of income while retaining its source, whereas section 63's special definition included an agreement and the agreement here transferred the assets as part of the completed arrangement (physical pages 10–14).

The Tribunal had itself rejected Revenue's alternative section 60 argument, although it had ruled against Dalmia on accrual. The Court further identified inconsistency in the AO's use of gross consideration for capital gains while attributing the adjusted profits to the seller. This was supporting reasoning, not a newly quantified capital-gains or interest award (physical pages 14–15).

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

03 JUDICIAL DECISION

Both assessee appeals succeeded. The two referred questions were answered in the negative for the assessee. The High Court judgment and the Tribunal and income-tax authorities' orders were set aside, and the respondent tax authorities were directed to take steps according to law and the judgment. There was no order as to costs and no quantified refund or fresh computation (physical page 15).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee for both assessment years

Two appeals allowed; two questions answered for assessee; impugned orders set aside; consequential lawful steps directed; no costs

Final entitlement-to-profits ruling with consequential implementation by the tax authorities

Depends on these asset-sale agreements and actual completion. Not permission to assign an already-earned tax liability away, make every uncompleted sale effective retrospectively, or exclude section 60 whenever any agreement exists.

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

05 AKHB REVIEW POINT

Read the entire transfer arrangement, including conditions precedent, extensions, the profit-and-loss clause, effective date and actual completion. Identify whose income the receipts were before asking who physically ran the business or received cash. An asset transfer coupled with a legally effective diversion is materially different from an obligation to spend or remit one's own accrued income.

Keep both referred years and the implementation direction visible. The source's return figures are not the amounts of factory profits or a Supreme Court tax calculation. Its discussion of business profits at year end and the special section 63 definition should remain within this factual and statutory setting; it does not settle accrual of every individual receipt or every later business-transfer structure.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and two appeals; exact assessment years and accounting periods

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Return history, principal terms and supplemental completion condition

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7; 8

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Completed sale, accounting-year discussion and diversion analysis

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Sections 60 and 63; differing Tribunal and High Court reasons

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Capital-gains inconsistency and full operative relief for both appeals

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: Unnumbered judicial text

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Umesh C. Banerjee, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 15 PDF pages; SHA-256

23d7d3e7584137e0b34c030b26e70a58e18f9df56525b625081ced93ef0b2f74. Original bytes preserved.

Complete unnumbered judicial text physical pages 4–15/SCR 738–749; preceding editorial headnote, contract extracts and quoted lower-court/precedent reasoning distinguished.

[Open cited source rendition](#)

The body identifies two appeals and two assessment years. The headnote and final reporter line use the singular “appeal”; the operative paragraph expressly says the appeals succeed. Both dispositions are preserved.; The headnote calls the two 1 October–30 September accounting periods “assessment periods”; the body expressly identifies AYs 1964-65 and 1965-66. Accounting periods are not substituted for assessment years.; The supplemental clause was conditional on completion and left operating control with Dalmia until transfer. Actual completion on 30 September 1964 is material and is not omitted from the holding.; The Tribunal rejected the alternative section 60 argument but ruled against the assessee on accrual. The Court’s support for that limited section 60 reasoning does not affirm the Tribunal’s overall disposition.; Page 14 uses the awkward phrase “otherwise in accordance” regarding the Tribunal’s section 60 finding; the surrounding discussion and operative result control the summary, with no silent reversal of the section 60 conclusion.; The purchase-price interest, return totals and gross/net capital-gains discussion are not independent quantified relief awards. Earlier authorities are known here only through the judgment’s bounded quotations and discussion.

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: 15](#)

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