

Eskayef (now known as SmithKline Beecham Pharmaceuticals (India) Ltd.) etc. v. Commissioner of Income Tax, Karnataka-II, Bangalore

Civil Appeal No. 2717 of 1996 / Civil Appeal Nos. 4545–4547 of 1996 (judicial heading; jurisdiction block prints 4545–4577)

[2000] Supp. 1 SCR 634 | 2000-07-20

Whether surtax liability was deductible in computing income, and whether the expenditure on the prescription-drug samples distributed to doctors fell within the then section 37(3A) restriction on advertisement, publicity or sales-promotion expenditure.

37 (surtax deductibility question) | 37(3A) (historical advertisement, publicity and sales-promotion expenditure restriction)

Two-judge bench | S.P. Bharucha, J. | Ruma Pal, J.

Assessment years: 1980-81

Historical sample-expense restriction; appeal and costs units differ

Eskayef applies the then section 37(3A) restriction to promotional prescription-drug samples on this record. It does not order total disallowance or approve all modern doctor benefits. AY 1980–81 and no costs order belong only to CA 2717; companion years are unstated and the companion appeals were dismissed with costs. Their printed number range conflicts (4545–4577 versus 4545–4547). Apex Laboratories is a bounded comparison only; current law, comprehensive later treatment and 2025 Act mapping remain unverified.

01 FACTS OF THE CASE

CA No. 2717 of 1996 concerned AY 1980–81. The High Court's certificate covered only whether liability to pay surtax was deductible when computing total income. A separate group of appeals arose from three Karnataka income-tax references: ITRC 144/1993 raised surtax and physicians' samples; ITRC 143/1993 and 171/1994 raised surtax. The companion appeal-number range is inconsistent in the report, and their assessment years are not specified (SCR 635G–H; 636B–637C).

On samples, the Court proceeded on the assessee's assertion that all the products were prescription drugs. The pharmaceutical company argued that free distribution to doctors was business expenditure, outside advertisement/publicity/sales promotion, and intended to obtain efficacy feedback. The Tribunal and High Court rejected the claimed exclusion from the section 37(3A) restriction. The High Court followed its earlier decision concerning the same assessee (SCR 637C–F; 639B–E).

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

02 DISCUSSION BY THE HON'BLE COURT

The surtax questions were already covered against the assessee by *Smith Kline and French (India) Ltd. v. CIT*, (1996) 219 ITR 581. The Court answered those questions against deductibility rather than undertaking a new surtax analysis (SCR 636C–D; 637B–C).

Doctors who could prescribe these drugs were the natural target of promotion. Distributing samples informed them of available treatment products and encouraged appropriate prescriptions; that was publicity and sales promotion for the provision under consideration. The claimed feedback purpose lacked the questionnaires or doctors' letters that could substantiate it. The Court agreed with the High Court's rejection of an artificially narrow, public-media-only meaning of the expenditure categories (SCR 637F–639E).

The Court did not consider physician samples to fall within the publication prohibition invoked under section 3 of the Drugs and Magic Remedies Act. It also rejected the suggested categorical distinction between a bare minimum essential business expenditure and other promotional expenditure. *J & J Dechane* was materially different because the fact-finders there had found some expenditure to test efficacy; no such finding existed here. The question was classification for the historical statutory limitation, not whether the expenditure had any business purpose at all (SCR 639F–641C).

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

03 JUDICIAL DECISION

CA No. 2717 of 1996 was dismissed with no order as to costs; its surtax question was answered in the negative, for Revenue. In the companion group the surtax questions were likewise answered against the assessees, and the physicians' sample question was answered affirmatively for Revenue: the expenditure fell within section 37(3A)'s restriction. Those companion appeals were dismissed with costs (SCR 636C–E; 637B–C; 641D).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Surtax-only appeal dismissed without a costs order; companion appeals dismissed with costs

Final rejection of surtax deduction and of the claimed exclusion of promotional sample expenditure from historical section 37(3A)

No quantified or total sample-expense disallowance is ordered in this report; no safe harbour for modern doctor benefits or all efficacy-testing programmes is established.

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

05 AKHB REVIEW POINT

Separate the general business-purpose requirement from a specific statutory restriction. A promotional expense does not escape that restriction merely because it is commercially necessary or addressed to professionals rather than the public. A genuine testing claim needs contemporaneous evidence and factual findings about its purpose; this judgment does not convert an unsupported label into a research exception.

Do not cite the narrow Drugs and Magic Remedies discussion as blanket permission for pharmaceutical inducements. A bounded comparison with Apex Laboratories (2022), paragraphs 17–22 and 36–37, concerns section 37(1) Explanation 1 and benefits prohibited by medical-conduct rules, including the gifts identified in its paragraph 3. That is a different legal inquiry from Eskayef's historical promotional-expenditure limit. No direct overruling relationship or comprehensive current compliance assessment is asserted.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and conflicting companion appeal ranges

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: Cover; SCR 635G–H and 636E

Source role: reported metadata and judicial text

2.

Topic: Surtax-only appeal, AY and separate costs direction

Source url: [Open cited source](#)

Pdf pages: 3

Paragraphs: SCR 636B–E

Source role: judicial text

3.

Topic: Companion questions, surtax answer and prescription-drug assumption

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 636E–637F

Source role: judicial text

4.

Topic: Promotional purpose and absent efficacy feedback

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 637F–639E

Source role: judicial text

5.

Topic: Publication prohibition argument and Andhra Pradesh comparison

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: SCR 639F–641C

Source role: judicial text

6.

Topic: Samples answer and companion costs

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: SCR 641C–D

Source role: judicial text

7.

Topic: Bounded comparison: benefits actually in issue

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: Paragraph 3; SCR 129E–F

Source role: bounded comparison judicial text

8.

Topic: Bounded comparison: later distinct section 37(1) Explanation 1 inquiry

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13; 14; 15; 16; 29

Paragraphs: Paragraphs 17–22 and 36–37; SCR 136–141, 154

Source role: bounded comparison judicial text

OTHER PROVISIONS CONSIDERED

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, section 3 and advertisement definition (argument addressed)

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.P. Bharucha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

COMPARISON OF DISTINCT HISTORICAL STATUTORY SETTINGS

1.

Case: M/s Apex Laboratories Pvt. Ltd. v. DCIT, Large Tax Payer Unit-II

Asset id: 2022_2_126_154

Comparison type: Later subject-matter comparison, not claimed direct treatment

Finding: Gifts and other doctor benefits were considered under Explanation 1 to section 37(1) and medical-conduct prohibitions. The reviewed paragraphs do not decide Eskayef's historical section 37(3A) classification or declare its samples reasoning overruled.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 8 PDF pages; SHA-256

135b038b9622e211f0073dfc9adac3c069a48b73533847f874c0a02dd981b415. Original bytes preserved.

Entire unnumbered judicial text, physical pages 3–8/SCR 636–641; separate Civil Appeal 2717 and companion-appeal units both read. Pages 1–2 are editorial/jurisdiction material. The extensive Karnataka and Andhra Pradesh High Court extracts are attributed precedent quotations, not separate Supreme Court judgments; no adjacent judgment.

Open cited source rendition

AY 1980–81 is expressly assigned only to Civil Appeal 2717 of 1996, the surtax-only certified appeal. The companion references ITRC 144/1993, 143/1993 and 171/1994 have no assessment years stated in this report; no years are inferred.

Physical page 2/SCR 635 prints companion CA Nos. 4545–4577/1996, while the judicial heading on page 3/SCR 636 prints 4545–4547. Both images were checked; the conflict is retained rather than silently resolved.; AY 1980–81 and “no order as to costs” belong to CA 2717 alone. The final “dismissed with costs” applies to the companion group; neither year nor costs direction is merged across units.; The long Karnataka High Court extract at SCR 637–639 and Andhra Pradesh extracts at SCR 640–641 are attributed earlier reasoning; the Supreme Court's adoption and factual distinction are identified separately.; No amount, rate, threshold, total disallowance or assessment year for the samples question is stated; none is supplied from inference.; Apex Laboratories is a bounded later subject comparison with distinct provisions and facts. Only the expressly identified passages were reviewed, not its entire judgment, and it is not represented as direct treatment of Eskayef.

This note records the section 37(3A) restriction litigated in these appeals, not a present disallowance percentage, threshold or modern pharmaceutical-compliance rule. The report does not reproduce a complete year-specific text or quantify the disallowance. The companion years must be verified before applying the historical statutory version. Explanation 1 to section 37(1) and later professional-conduct rules were not the issue decided in Eskayef.

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: 8

SHA-256: 135b038b9622e211f0073dfc9adac3c069a48b73533847f874c0a02dd981b415

bounded comparison judgment - PDF pages: 29

SHA-256: 98d84fbad286646b628ac9a098aba7d8077c3667766a8f72cd946a65d48d6a44

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