

Shiv Raj Gupta v. Commissioner of Income-Tax, Delhi-IV

Civil Appeal No. 12044 of 2016

[2020] 5 SCR 874 | 2020-07-22

Whether the Rs. 6.6 crore payment was a genuine non-compete capital receipt for AY 1995-96 or taxable management-termination/share-sale consideration; and whether the High Court could substitute a capital-gains basis outside the substantial question of law it had framed under section 260A.

28(ii)(a) | 260A

Three-judge bench | R. F. Nariman, J. | Navin Sinha, J. | B. R. Gavai, J.

Assessment years: 1995-96

01 FACTS OF THE CASE

Shiv Raj Gupta was Chairman and Managing Director of Central Distillery and Breweries Ltd. (CDBL), a manufacturer of beer and Indian-made foreign liquor. Under an MoU dated 13 April 1994, his family's controlling shareholding was sold to Shaw Wallace group companies for Rs. 55,83,270 at Rs. 30 per share, against a stated market price of Rs. 3. The agreement involved transfer of possession, management and control and resignation of Gupta and his son from their managerial posts (paragraphs 1-3).

A separate Deed of Covenant of the same date provided Rs. 6.6 crore to Gupta alone for a ten-year restriction on directly or indirectly engaging in, assisting or supporting competing liquor and beer activities. It recorded his knowledge, skill and expertise. A related letter required Rs. 3 crore to remain deposited with the purchaser group for two years, available against loss caused by breach (paragraphs 4 and 7; 17).

For AY 1995-96, the Assessing Officer treated the covenant as a colourable device and taxed the sum under section 28(ii)(a); the Commissioner (Appeals) agreed. The Tribunal's majority accepted the separate covenant and allowed the assessee's appeal. On Revenue's section 260A appeal the Delhi High Court framed a question about management-termination compensation versus non-compete capital receipt, but ultimately taxed the amount as additional share-sale consideration giving rise to capital gains (paragraphs 5-9).

Source: [reported judgment / paragraphs 1-9 / PDF pages 5, 6, 7, 8, 9, 10 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Independent section 260A ground: the High Court's jurisdiction depended on a substantial question of law. An additional question could be heard only with recorded reasons and the requisite opportunity to the parties. The framed question concerned section 28(ii)(a), not another basis for taxing the payment as share-sale consideration. By adopting that unframed capital-gains route without following section 260A(4), the High Court committed a defect sufficient to set its judgment aside (paragraphs 12-14).

The Court nevertheless decided the merits. Commercial expediency is assessed from the businessperson's position. Revenue could examine whether a payment was genuine, but could not reject an arm's-length business arrangement merely because it thought the amount too high or the competitive threat too slight. The Court rejected the reliance on the size of Shaw Wallace, the losses of Gupta's other liquor concern and the purchaser's later turnover growth as reasons for recasting this covenant (paragraphs 15-18).

The separate purposes were supported by the record: the share price already reflected a control premium; the family sellers were separately paid for their shares; and the non-compete consideration went only to Gupta for his personal expertise and approximately 35 years' experience. The amount was negotiated and the restriction lasted ten years. The Rs. 3 crore deposit mechanism operated like a penalty safeguard, contradicting the assertion that breach carried no effective consequence. The Court accepted the Tribunal majority's findings that the two agreements had genuinely distinct purposes and were not a colourable device (paragraphs 17-18).

Following Guffic Chem, the Court distinguished compensation for loss of agency or management from consideration attributable to a genuine negative or restrictive covenant. For the historical assessment before it, the latter was a capital receipt not taxable as the asserted management-termination payment. The quoted Guffic Chem discussion treated section 28(va), introduced by the Finance Act, 2002 with effect from 1 April 2003, as amendatory rather than clarificatory. That later charging change could not be carried back to AY 1995-96 (paragraphs 19-20).

The result concerns the character and treatment of the separate Rs. 6.6 crore non-compete receipt. It does not declare the actual share-sale proceeds exempt, prohibit examination of sham arrangements, or immunise every payment described as non-compete consideration. Nor is the High Court's capital-gains conclusion endorsed; it was set aside on the procedural and substantive grounds explained above (paragraphs 14-20).

Source: [reported judgment / paragraphs 12-14 / PDF pages 11, 12, 13, 14, 15 / judgment](#); [reported judgment / paragraphs 15-18 / PDF pages 16, 17, 18, 19, 20, 21 / judgment](#); [reported judgment / paragraphs 19-20 / PDF pages 21, 22, 23 / judgment](#); [official signed judgment / paragraphs 17-18; 19 quoting Guffic Chem paragraph 8 / PDF pages 20, 21, 22, 23, 24, 26 / judgment](#)

03 JUDICIAL DECISION

The assessee's appeal was allowed and the Delhi High Court judgment was set aside. The Court found both a section 260A defect in the unframed capital-gains basis and substantive error in treating the genuine separate non-compete arrangement as disguised consideration. Following Guffic Chem, the Rs. 6.6 crore receipt retained its non-taxable capital character for AY 1995-96. Pending applications were disposed of; the judgment ordered no remand (paragraphs 12-20).

Source: [reported judgment / paragraphs 14-20 / PDF pages 15, 16, 17, 18, 19, 20, 21, 22, 23 / judgment; official signed judgment / paragraphs 20 / PDF pages 27 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, Shiv Raj Gupta

Appeal allowed; impugned High Court judgment set aside; pending applications disposed of

Both appellate-procedure and substantive non-compete-characterisation grounds decided

Relief concerns a genuine distinct ten-year non-compete receipt for AY 1995-96, before section 28(va) took effect. Actual share-sale consideration and current-law non-compete taxation are not exempted by this judgment.

Source: [official signed judgment / paragraphs 20 / PDF pages 27 / judgment](#)

05 AKHB REVIEW POINT

Keep the receipt categories distinct: share-sale price, payment for termination of management, and consideration for a genuine restriction on competition. For a historical claim, retain the sale documents, covenant, negotiation evidence, commercial threat assessment and enforceable safeguards. Separate documents alone are insufficient; the Court relied on their different commercial purposes and corroborating facts.

On appeal, compare the tax basis actually decided with the substantial questions framed. A shift to an unframed basis under section 260A calls for the statutory procedural safeguards, but this decision should not be reduced to procedure alone: the Court also resolved genuineness and characterisation on the merits.

Do not use this AY 1995-96 result to claim a present exemption for non-compete fees or to exempt share-sale gains. The 1 April 2003 section 28(va) change is central to the historical limit. Later statutory versions, subsequent treatment and any Income-tax Act, 2025 application require separate checking.

Source: [reported judgment / paragraphs 12-20 / PDF pages 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 / judgment](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

28(va); 28(iv)

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 28(ii)(a)

Role: principal charge alleged by Revenue

Basis: Whether the Rs. 6.6 crore covenant payment was really compensation connected with termination of management.

2.

Act: Income-tax Act, 1961

Section: 260A(3)-(6)

Role: independent appellate-jurisdiction ground

Basis: The High Court could not decide a different capital-gains question without formulating the substantial question, recording reasons and providing a fair opportunity.

3.

Act: Income-tax Act, 1961

Section: 28(va)

Role: historical prospective amendment

Basis: Guffic Chem is followed on genuine non-compete receipts and the amendment effective 1 April 2003; no present-law non-compete exemption is recognised.

4.

Act: Income-tax Act, 1961

Section: 28(iv)

Role: quoted Revenue appeal ground only

Basis: Appears in a Revenue question reproduced in paragraph 8; no independent section 28(iv) issue is decided.

5.

Act: Code of Civil Procedure, 1908

Section: 100

Role: procedural analogy

Basis: Section 260A is explained using authorities concerning formulation of substantial questions in second appeals.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R. F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 27 PDF pages; SHA-256
9ff34b2d55ce0293faaf216cc9398ca8d772c0908b15c5bee8c0d33eb2f70703. Original bytes preserved.
Official judgment paragraphs 1-20 on physical pages 1-27; signatures, date and operative paragraph 20 on page 27.
Cover, signatures/date, selected substantive passages and operative disposition checked against the fully read reported judicial text; not a claim that every page of the separate official rendition was independently reread.

[Open cited source rendition](#)

The paragraph 2 share table's individual entries total 149,172 although its stated total is 186,109. Paragraph 17(ii) refers to the son and wife as largest holders, while the table and earlier narrative differ. Both renditions contain the inconsistency; the note does not invent corrected share allocations.

The quoted covenant contains a malformed numeric rendering in one recital, but the words, operative clauses and Court's discussion consistently identify Rs. 6.6 crore.

The Guffic Chem quotation uses till AY 2003-04 alongside repeated express commencement from 1 April 2003. This note uses the express statutory effective date and the actual AY 1995-96, avoiding an unsupported additional exemption year.

Section 28(iv) appears in a reproduced Revenue question only; no independent holding on that provision is attributed.

Reported citation verified on the reported cover. No neutral citation inferred from catalogue metadata.

AY 1995-96 is expressly identified in paragraph 1. Section 28(va), introduced with effect from 1 April 2003, is discussed as a later historical amendment and does not govern that assessment year.

STATUTORY SCOPE

Section 28(ii)(a) for AY 1995-96; section 260A appellate requirements; section 28(va) commencement on 1 April 2003 as discussed through Guffic Chem.

No automatic Income-tax Act, 2025 crosswalk, present-law certification or comprehensive later-treatment audit.

LATER TREATMENT

Source checked 2026-10-04. Subsequent judicial treatment and later statutory or treaty changes have not been comprehensively verified. References to earlier decisions describe their treatment in this judgment only.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 27](#)

SHA-256: 9ff34b2d55ce0293faaf216cc9398ca8d772c0908b15c5bee8c0d33eb2f70703

[reported judgment - PDF pages: 23](#)

SHA-256: ff7e8c365b9f61a47e098a63f2e5f6a158ccd52c7f81325a01665e74385d13df

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