

The Commissioner of Income-tax, Bombay Circle II v. The National Syndicate, Bombay

Civil Appeal No. 280 of 1959 — Single Supreme Court civil appeal disposed of by this judgment.
[1961] 2 SCR 229 | 1960-11-01

A business operated for part of the accounting year could deduct the qualifying section 10(2)(vii) loss on equipment sold after closure but within that same year.

1922 Act: 10(1) | 1922 Act: 10(2)(iv) | 1922 Act: 10(2)(vii), main clause and first proviso | 1922 Act: 10(2)(vii), second proviso (distinguished) | 1922 Act: 66(2)

3 Judges | S. K. Das | M. Hidayatullah | J. C. Shah

01 FACTS OF THE CASE

The firm bought a tailoring business as a going concern on 11 January 1945. The price included sewing machines and a lorry used to supply garments to Government departments. When wartime demand ended, the business closed in August 1945. Machines were sold between August 1945 and February 1946 and the lorry in February; losses of Rs.41,998 and Rs.3,700 were written off when the accounts closed on 28 February 1946. Tax authorities and the Tribunal refused the Rs.45,698 deduction because the disposals occurred in winding up. The High Court accepted closure on 28 August but held the losses allowable. Revenue appealed.

Source: [SCR 231-232; facts and procedural record](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court applied the main clause and first proviso of section 10(2)(vii), read with section 10(1) and the asset-use requirement in clause (iv). Four conditions mattered: the assessee carried on the business; the equipment was used for it; disposal occurred within the accounting year; and the loss was entered and written off in the books. No words required operation throughout the year or continued business on the sale date. Annual profits could not be computed by taxing the productive months while excluding a qualifying loss incurred later in the same year. *Pursa* and *Express Newspapers* concerned the second proviso's fiction recapturing depreciation as profit. That fiction and its 1949 amendment were not an exact counterpart of the loss allowance and did not govern this case.

Source: [SCR 233-240; reasoning, with opinion boundaries preserved](#)

03 JUDICIAL DECISION

The High Court correctly allowed the deduction despite closure before disposal. The assessee was not permitted to reopen the separate finding about the closure date in Revenue's appeal: there was evidence for that finding and the statutory issue could be resolved while accepting it. The decision therefore did not depend on treating liquidation receipts as continued trading.

Source: [SCR 232-240; holding and express limits](#)

04 OUTCOME / IN WHOSE FAVOUR

Revenue's appeal dismissed. The High Court's answer allowing the Rs.45,698 statutory loss deduction remained effective. Revenue to pay costs.

Source: [SCR 240-240; operative disposition and costs](#)

05 AKHB REVIEW POINT

Test each express allowance condition and keep the main provision distinct from a proviso that creates a separate taxable fiction. The result concerns equipment used during the same accounting year as its disposal, with the deficiency actually written off. It does not authorize deduction of all capital losses after business cessation or disposals in later years. Modern block depreciation and restricted terminal-loss provisions require their own analysis before this reasoning is applied.

Source: [SCR 233-240; editorial analysis based on the identified primary passages](#)

ORIGINATING PROCEEDINGS

1.

Case numbers: Income-tax Reference No. 17 of 1956

Relationship: Bombay High Court, judgment 22 August 1956

SOURCE & VERIFICATION

Original reported Supreme Court judgment

12-page retained public-mirror SCR report. The complete report was read as text and page images. The acquisition URL is preserved provenance; current endpoint availability and authentication as a signed original are not newly verified. All twelve physical text and image pages, SCR 229-240. Caption/headnote pp 1-2; Hidayatullah J judgment pp 2-12 and dismissal with costs p 12. Two referred questions remain distinct; printed Pursa ratio discussion preserved rather than rewritten.

Open cited source rendition

The quoted Pursa discussion includes two distinct grounds and an awkward description of the "second ratio"; the note relies on the target Court's actual statutory distinction, not a rewritten Pursa holding.

The 1949 amendment discussed affects the second proviso; it is not imported into the operative main loss clause.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 10(1), 10(2)(iv), 10(2)(vii), main clause and first proviso, 10(2)(vii), second proviso (distinguished), 66(2)

In the Finance Act 2011 text, section 32(1)(ii) uses a block-of-assets system, while section 32(1)(iii) is confined to assets with depreciation claimed and allowed under clause (i), the power-undertaking limb. Its operative wording also excludes the first-use year and requires write-off. This is a material textual difference, not automatic continuation of the 1922 allowance.

No 2025 depreciation or disposal provision was independently verified for this note. No terminal-loss renumbering or equivalent entitlement is asserted.

The historical operative law is identified separately. Only the stated later versions and bounded passages were checked; applicability to a later tax year, transitional savings and comprehensive judicial history remain unverified.

Other provisions addressed: Taxation Laws (Extension to Merged States and Amendment) Act, 1949, section 11 (second-proviso amendment discussed)

LATER TREATMENT

Source checked 2026-10-08. No specific later judicial treatment adopted except where expressly stated.

No later primary application of this precise same-year post-closure loss holding was verified. The earlier cases discussed in the judgment are not later-treatment evidence.

Earlier cases discussed in the target judgment do not constitute subsequent history.

IDENTIFIED SOURCE LINKS

[Income-tax Act,1961: bounded provision comparison](#)

DOR-hosted Taxmann compilation labelled as amended by Finance Act2011 Only the identified statutory passages on these pages plus version p42. Not a current consolidated text, Gazette-original authentication, whole-Act or image review. Text pages read: 206–207, 211.

AI DISCLOSURE

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