

Mahadeva Upendra Sinai etc. etc. v. Union of India & Ors.

Writ Petition No.112 of 1971 / Writ Petitions Nos.391-394 of 1971 / Writ Petitions Nos.330-331 of 1974 / Writ Petitions Nos.382-387 of 1974

[1975] 2 SCR 640 | 1974-11-07

Whether the Central Government could use the Regulation's removal-of-difficulties power retrospectively to reduce written-down value by depreciation never actually allowed under the former Portuguese turnover-tax law, through the second proviso to clause (3) of the 1970 Order.

2(24)(i) (income includes profits and gains; context) | 28(i) (business profits; context) | 29 (business-income computation; context) | 32(1) and (2) (historical depreciation and unabsorbed allowance) | 34(2)(i) (historical aggregate depreciation ceiling) | 43(1) (actual cost; context) | 43(6)(a), (b) and Explanation 3 (historical written-down-value definition and express carry-forward deeming)

Five-judge Constitution Bench; majority 4-1 | A.N. Ray, C.J. | K.K. Mathew, J. | A. Alagiriswami, J. | P.K. Goswami, J. | R.S. Sarkaria, J.

Assessment years: 1964-65, 1965-66

Limited 4-1 invalidation and material later qualifications

The 4-1 majority invalidated only the second proviso to clause (3) of Order 2 of 1970 under Regulation III of 1963 clause (7), and awarded petitioners' costs. Alagiriswami's separate dissent would dismiss; its illustrations are not the majority's holding. The headnote's Regulation II, narrative W.P.330-331 year, and premature SCR 659 running header must be checked against the judicial docket, body and opinion boundary. Actually allowed is not a universal ban on express statutory deeming: the primary judgment preserves Explanation 3; Maharana Mills distinguishes a real implementation difficulty; Karnataka Small Scale Industries distinguishes actual section 115J deductions. Doom Dooma's historical tea-income application is materially qualified by later section 43(6) Explanation 7. Mahendra Mills' historical option cannot be exported without the later Explanation 5 and block-assets changes. The 2011 footnotes and bounded Finance Act 2026-version 2025 text checks do not certify the full amendment chain, current law or a 2025 mapping. Original PDF unchanged; comprehensive later treatment remains not verified.

01 FACTS OF THE CASE

The petitioners carried on business in Goa, Daman and Diu, former Portuguese territories that became part of India on 19 December 1961. Regulation III of 1963, promulgated under Article 240, extended the Income-tax Act, 1961 from 1 April 1963 and repealed corresponding local laws. Clause (7) empowered the Central Government to make provisions or directions to remove a difficulty arising in giving effect to the extended laws. The majority expressly said the challenged Order was not made under the separate section 294-A hardship/exemption power (physical pages 4-5/SCR 643 G-644 E).

The former local law levied tax on gross receipts or turnover without computing net profits and without granting depreciation. In completed assessments from AY 1964-65, the petitioners' first written-down value was accordingly actual cost less no earlier depreciation, followed by progressive reductions for depreciation actually allowed under the Indian Act. The Government's Order 2 of 1970, recorded as promulgated on 8 November 1970 and deemed effective from 1 April 1963, required local-law depreciation to be counted. Its second proviso went further: where no local depreciation had been allowed, or it could not be ascertained, depreciation was to be calculated at the relevant Indian rates and deemed actually allowed (physical pages 5-6/SCR 644 F-645 F).

The Revenue sought to revise past assessments on that basis, reducing opening written-down value and raising tax. For the petitioners identified at SCR 645 H as W.P.330-331, a revised AY 1965-66 demand had already been raised but kept in abeyance pending the petitions. Thirteen Article 32 petitions were disposed of together. The conflicting year attached to that pair of petitions in the narrative is preserved as a source caution; the full docket lists them as petitions of 1974 (physical pages 4 and 6-7/SCR 643 E, 645 G-646 A).

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

02 DISCUSSION BY THE HON'BLE COURT

Majority, Sarkaria, J. for Ray, C.J., Mathew, Goswami and himself: The Court first located depreciation in the historical business-income scheme. Although commercial principles inform computation of real profits where no statutory allowance or prohibition controls, depreciation was expressly governed by sections 32, 34 and 43(6). The historical written-down-value definition starts from actual cost and deducts depreciation actually allowed. The word actually refers to an allowance taken into account and given effect in computation, not a merely hypothetical allowance. The Court expressly preserved Explanation 3's statutory treatment of depreciation carried forward under section 32(2) as actually allowed; that was not the petitioners' case (physical pages 7-8/SCR 646 B-647 H).

The petitioners argued that no implementation difficulty existed, that the executive could not rewrite the Act's essential depreciation scheme, and that the proviso could not work fairly. The Revenue answered that old assets could not sensibly enter the Indian regime at full cost, that the local law had not been repealed by the Income-tax Act itself, and that a deemed deduction was required for parity with other taxpayers. These are the opposing submissions, not parallel holdings (physical pages 9-10/SCR 648-649 D).

The majority applied the seven-judge *Straw Products* removal-of-difficulties reasoning. It distinguished taking account of depreciation already allowed under a local income-tax law from manufacturing an allowance never received. A qualifying implementation difficulty was an objective condition precedent. The delegated power permitted necessary minor adaptations or peripheral adjustments, but could not alter the statute's scheme or essential features. An executive desire to collect more tax or supply a perceived legislative omission was insufficient (physical pages 10-16/SCR 649 E-655 H, especially 653 H-654 B).

No qualifying difficulty existed here. Section 43(6)(b) could operate: actual cost less no earlier allowance was still an ascertainable written-down value, and later actual depreciation would progressively reduce it. That was how the assessments had already been made from AY 1964-65. The asserted parity justification also failed. The majority regarded the proposed fictional deduction as placing these assessees at a disadvantage relative to others who had not actually received prior depreciation (physical page 17/SCR 656 A-F).

Dewan Bahadur Ramgopal Mills was distinguished, not overruled. In that Part B State setting, a local income-tax depreciation system and its written-down-value mechanism had actually operated. The relevant explanation harmonised depreciation already taken into account; the present Portuguese turnover-tax regime had no such computation. The new proviso therefore changed the substantive Indian scheme rather than merely giving it effect (physical pages 17-19/SCR 656 F-658 G).

There was an additional workable-machinery objection. Under the then section 32(2), unabsorbed depreciation could be carried forward without a time limit, but the extended Act supplied no machinery to assess pre-1963 profits and losses so as to give that right effect. During the interregnum identified by the majority, 19 December 1961 to 1 April 1963, no

02 DISCUSSION BY THE HON'BLE COURT

income-tax law authorised the needed levy. Retrospective assessment machinery, if enacted, had to come from Parliament rather than this executive order. The proviso would create difficulties while reducing the assessee's value base (physical pages 19-20/SCR 658 G-659 G).

Separate dissent, Alagiriswami, J.: The dissent regarded full original cost for long-used assets as inconsistent with economic reality and the normal declining-value scheme. It treated Ramgopal Mills as directly supporting harmonisation by the delegated power and read Straw Products as a no-actual-difficulty case which had not invalidated the former authority. The worked figures at SCR 662-664 are dissenting illustrations, not findings about these petitioners' assets. It considered reconstruction from business accounts practicable and concluded that a power to remove an existing difficulty included removing it from its inception. It would therefore uphold the challenged arrangement and dismiss the petitions. These propositions did not command the Court's majority (physical pages 21-27/SCR 660-666).

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

03 JUDICIAL DECISION

By a 4-1 majority the Court allowed the petitions and declared the second proviso to clause (3) of the Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order 2 of 1970 ultra vires the Central Government's power under clause (7) of Regulation III of 1963. The Revenue authorities were not entitled to levy tax on depreciation computed under that proviso. Respondents were ordered to pay the petitioners' costs. The Court did not invalidate the entire Order, strike down the Act or Regulation, quantify a refund, or decide a general prohibition on statutory deeming (physical page 20/SCR 659 G-H; dissent and reporter disposition at physical page 27/SCR 666 G).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee/petitioners, by 4-1 majority

Article 32 petitions allowed; second proviso to clause (3) declared ultra vires; levy based on that proviso barred; respondents to pay petitioners' costs

Final merits determination of the challenged delegated proviso

Only the second proviso is invalidated. The majority preserves express statutory deeming and the distinction between absent and actually established implementation difficulties; the dissent's proposed dismissal is not the outcome.

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

05 AKHB REVIEW POINT

Trace both the allowance and the legal power used to alter it. A reduction in written-down value needs the applicable statutory basis; an assertion of administrative difficulty cannot itself replace depreciation actually allowed with an invented deduction. Equally, this case is not a universal rule against all deeming provisions: the majority itself recognises Explanation 3, and distinguishes the historically valid local-law harmonisation in Ramgopal Mills.

Bounded later treatment, *Maharana Mills Pvt. Ltd. v. Income Tax Tribunal*, decided 3 May 1989, [1989] 3 SCR 1: after discussing *Sinai* and *Straw Products*, the Court upheld the Part B States 1956 Explanation and declined a larger-Bench reference because an actual difficulty existed in the Saurashtra setting. It described the reviewing court's task in terms of a reasonable or sound basis for the Government's conclusion, while rejecting the notion that governmental satisfaction is conclusive. Do not portray *Sinai* as invalidating every removal-of-difficulties adjustment or as overruling *Ramgopal Mills* (physical pages 14-18/SCR 14-18). The later source's reference to *Sinai* clause (2) is a miscitation; the original decision concerns clause (3).

Karnataka Small Scale Industries Development Corporation Ltd. v. C.I.T., decided 3 December 2002, [2002] Supp.4 SCR 453, expressly distinguished *Sinai*. In the section 115J two-stage calculation, ordinary deductions had actually been taken into account before determining whether 30% of book profit became deemed total income. Section 115J(2) preserved only the otherwise unabsorbed balance, not a right to restore deductions already used in that calculation. This concerns deemed income, not a 30% tax rate and not every later minimum-tax regime (physical pages 7-11/SCR 459-463).

C.I.T., Dibrugarh v. Doom Dooma India Ltd., decided 18 February 2009, [2009] 2 SCR 733, directly applied *Sinai*'s actually-allowed construction to Rule 8 composite tea income, taking proportionate depreciation for the historical years before it (paragraphs 8-16, physical pages 6-10). That outcome must be kept with the later statutory qualification: the government-hosted 2011 compilation contains section 43(6) Explanation 7, deeming full-business-basis depreciation actually allowed where income is partly agricultural and partly taxable business income. Its editorial amendment footnote records insertion by Finance (No.2) Act, 2009 with effect from 1 April 2010 (physical page 320/printed page 1.279). The amending Gazette and complete later litigation were not independently audited.

Related option cases require their own version limits. *Mahendra Mills*, decided 15 March 2000, [2000] 2 SCR 465, concerned the pre-1 April 1988 scheme and former section 34(1). *United Phosphorous*, decided 8 February 2008, [2008] 2 SCR 658, remitted the later block-assets question for reconsideration in light of section 34(1)'s omission and Explanation 5 to section 32(1); it did not finally answer that remitted question. The 2011 compilation prints Explanation 5 applying the depreciation provision whether or not the assessee claimed it, with an editorial footnote recording Finance Act, 2001 insertion from 1 April 2002 (physical page 210/printed page 1.169). Neither related judgment directly cites *Sinai*, and no unqualified present-day option to refuse depreciation is asserted.

05 AKHB REVIEW POINT

Bounded 2025 text check: the official snapshot labelled as amended by Finance Act, 2026 contains section 33(7), applying depreciation whether claimed or not; section 41(1)(b)–(c), using actually allowed in the written-down-value rules; and express deeming in section 41(8)–(10), including carried-forward allowance, non-computation years and mixed agricultural/business income (physical pages 64–67 and 80–82). Section 535 separately conditions its removal-of-difficulties power on consistency with the 2025 Act, and the checked opening savings clauses of section 536 retain operation of the repealed Act for specified earlier-year matters (physical pages 584–585). These are verified text locations in a bounded snapshot, not a certified mapping of the 1963 Regulation or a conclusion that the 1974 holding applies unchanged to every later regime.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, actual date, bench and reporter majority identification

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR 640 heading and 641 B

Source role: reported metadata

2.

Topic: Full petition group and start of majority

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: SCR 643 E–H

Source role: reported metadata and judicial text

3.

Topic: Actual enabling Regulation, excluded section 294-A, retrospective Order and local regime

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 644–645

Source role: judicial text

4.

Topic: Assessments and revised demand; narrative petition-year anomaly

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 645 E-646 A

Source role: judicial text

5.

Topic: Historical depreciation rules and Explanation 3 qualification

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR 646-647

Source role: judicial text

6.

Topic: Opposing submissions and Straw Products analysis

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12; 13

Paragraphs: SCR 648-652

Source role: judicial text and submissions

7.

Topic: Objective difficulty and limits on delegated power

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: SCR 653-655

Source role: judicial text

8.

Topic: Workable written-down value and Ramgopal distinction

Source url: [Open cited source](#)

Pdf pages: 17; 18; 19

Paragraphs: SCR 656-658

Source role: judicial text

9.

Topic: Carry-forward machinery and precise majority relief/costs

Source url: [Open cited source](#)

Pdf pages: 19; 20

Paragraphs: SCR 658 G-659 H

Source role: judicial text

10.

Topic: Separate dissent and reporter's majority disposition

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23; 24; 25; 26; 27

Paragraphs: SCR 660-666

Source role: dissent separate from majority

11.

Topic: Maharana: actual difficulty, reasonable-basis review and no overruling

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16; 17; 18

Paragraphs: SCR 14-18

Source role: later judicial treatment

12.

Topic: Karnataka: actual section 115J deductions distinguished

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10; 11

Paragraphs: SCR 459-463

Source role: later judicial treatment

13.

Topic: Doom Dooma: historical Rule 8 application

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8; 9; 10; 11

Paragraphs: Paragraphs 8-18/SCR 738-743

Source role: later judicial treatment

14.

Topic: Mahendra Mills: expressly historical option; not direct Sinai citation

Source url: [Open cited source](#)

Pdf pages: 4; 27; 28; 29; 30

Paragraphs: SCR 468 and 491-494

Source role: later related judgment

15.

Topic: United Phosphorous: block-assets issue remitted

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: Paragraphs 5-6/SCR 660-661

Source role: later related judgment

16.

Topic: Bounded later statutory explanations and editorial dates

Source url: [Open cited source](#)

Pdf pages: 210; 320

Paragraphs: Section 32(1) Explanation 5/footnote 11 and section 43(6) Explanation 7/footnote 40

Source role: bounded statutory compilation

17.

Topic: 2025 depreciation and written-down-value rules, bounded snapshot

Source url: [Open cited source](#)

Pdf pages: 64; 65; 66; 67; 80; 81; 82

Paragraphs: Sections 33 and 41

Source role: bounded official statutory pdf

18.

Topic: 2025 distinct removal power and opening savings clauses only

Source url: [Open cited source](#)

Pdf pages: 584; 585

Paragraphs: Section 535 and section 536(1), (2)(a)-(f)

Source role: bounded official statutory pdf

LEAD AND SEPARATE OPINIONS

1.

Role: majority

Author: R.S. Sarkaria, J.

Joined by: A.N. Ray, C.J.; K.K. Mathew, J.; P.K. Goswami, J.

Physical pages: 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20

Result: Petitions allowed; only second proviso to clause (3) declared ultra vires; respondents to pay petitioners' costs

2.

Role: dissent

Author: A. Alagiriswami, J.

Physical pages: 21; 22; 23; 24; 25; 26; 27

Result: Would dismiss the writ petitions; this is not the operative outcome

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

This is an actual 1961 depreciation challenge following extension of that Act to Goa, Daman and Diu. The impugned delegated provision is only the second proviso to clause (3) of Order 2 of 1970, made under Regulation III of 1963 clause (7). The Court distinguishes the power from section 294-A and distinguishes primary legislation and explicit statutory deeming provisions from this executive attempt to create a notional allowance.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.S. Sarkaria, J., for the majority; A. Alagiriswami, J., dissenting

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, historical depreciation/written-down-value scheme; Taxation Laws (Extension to Union Territories) Regulation III of 1963 and Removal of Difficulties Order 2 of 1970

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Constitution of India: Articles 32 and 240; Taxation Laws (Extension to Union Territories) Regulation III of 1963: clauses (3), (4) and (7); Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order 2 of 1970: clause (2), retrospective commencement, and clause (3), especially its second proviso; Section 294-A of the Income-tax Act, 1961, as introduced by the Regulation, expressly not the power under which the challenged Order was made; Earlier 1922 Act sections 10(2)(vi) and 10(5)(b), Finance Act 1950 section 12 and merged/Part B States orders appear in the analysis of cited authorities, not as this case's assessment provisions

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 27 PDF pages; SHA-256 8a8e53f611c02215ffe56bb0c0a898c2dab21db9b0ca5b16dc6701d4a1dedb97. Original bytes preserved. Reporter headnote physical pages 1-4/SCR 640-643 E; original-jurisdiction metadata and judicial attribution page 4/SCR 643 E-G. Sarkaria, J.'s majority body begins physical page 4/SCR 643 G and ends physical page 20/SCR 659 H with petitions allowed and costs. Despite the premature running header at SCR 659 naming Alagiriswami, his separate dissent starts physical page 21/SCR 660 A and ends physical page 27/SCR 666 G. Reporter's final line says petitions allowed. No neighbouring judgment.

Open cited source rendition

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; majority dissent separated: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

Judgment delivered on 7 November 1974; 1975 is the SCR report year. Later judgments sometimes style the name Madeva Upendra Sinai. The catalogue identifier 1974INSC232 is not used as a separately authenticated neutral citation.

The judgment is dated 7 November 1974; the report year is 1975. Later sources use the variant Madeva; the primary caption reads Mahadeva.; The full group is W.P.112 and 391-394 of 1971 and 330-331 and 382-387 of 1974. SCR 645 H calls the last-mentioned pair petitions of 1971, contrary to the docket at SCR 643 and dissent at SCR 660; no silent correction is made to that recital.; The headnote at SCR 640 C prints Regulation II, while its subject heading and the judicial body at SCR 644 A and operative order identify Regulation III of 1963. The latter controls.; The judicial text records the Order as promulgated on 8 November 1970 and deemed effective from 1 April 1963. This note reports those source dates without independently authenticating the Gazette.; The second proviso to clause (3), not the entire Order or Regulation, is the target of the majority's declaration. Section 294-A is expressly not the source of the impugned power.; The running header at SCR 659 prematurely names Alagiriswami although the majority continues through that page's costs order. The dissent actually begins at SCR 660; its proposed dismissal and illustrative figures are not the Court's disposition or these petitioners' accounts.; The source contains minor printed statutory-reference anomalies in its historical quotations, including the first-proviso 1885 reference at SCR 645 A and numeral forms in the clause (3) quotation at SCR 644 H. The note relies on the substantive judicial discussion and express section 43(6)(b) and 34(2)(i) references rather than inventing new provisions.; Maharana Mills later calls the impugned Sinai provision clause (2); this does not displace the original clause (3). Karnataka's full image at SCR 462 E-H supplies text missing from its extraction.; No blanket exclusion of statutory deemed allowance or present option to refuse depreciation is derived. Later section 115J distinctions, Explanation 5 and Explanation 7, and explicit 2025 deeming text are retained.; The 2011 government-hosted compilation includes editorial Taxmann amendment-history footnotes; they are distinguished from independently authenticated amending legislation. The 2025 snapshot is explicitly only as amended by Finance Act, 2026 and is not assumed to include every later change.

Assessments are described collectively as AY 1964-65 onwards; the source separately identifies a revised AY 1965-66 demand. No exhaustive petition-by-petition list or terminal AY is supplied. SCR 645 H calls W.P.330-331 petitions of 1971, inconsistent with the docket and dissent which identify 1974.

STATUTORY SCOPE

Only explicitly identified bounded statutory text has been checked. No automatic 1961-to-2025 mapping or certification of present law.

LATER TREATMENT

Source checked 2026-10-05. not_verified comprehensively. Direct bounded later checks: Maharana Mills (1989) distinguishes an actual-difficulty setting; Karnataka Small Scale Industries (2002) distinguishes actual deductions within section 115J; Doom Dooma (2009) applies the phrase in a historical Rule 8 setting. Mahendra Mills and United Phosphorous are related depreciation authorities without a direct Sinai citation. The 2011 compilation's Explanation 5/7 text and editorial commencement footnotes, and specified 2025 snapshot provisions, are separately registered. No comprehensive citation history, amendment chain, amending Gazette/notification audit, continued-applicability or current-law certification.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 27](#)

SHA-256: 8a8e53f611c02215ffe56bb0c0a898c2dab21db9b0ca5b16dc6701d4a1dedb97

[later judicial treatment - PDF pages: 18](#)

SHA-256: d2d07856473a45d119d9416e0f577f973c0c22ec4d7a818b821cb4b7e1b90924

[later judicial treatment - PDF pages: 11](#)

SHA-256: 34d026a71a7499122d66b0e49cbe61a17a3498740627306df76a4d834ec293c7

[later judicial treatment - PDF pages: 11](#)

SHA-256: 3ba098c35e23e40e5bcd8db4abc132490c4266a4bb133d5a83084fe3f7f029b9

[later related judgment not direct citation - PDF pages: 30](#)

SHA-256: 0fe7018d4db9828c1f1a9893788f9222d73e3cc8b30eeca3ed53fae2ca3b208e

[later related judgment not direct citation - PDF pages: 4](#)

SHA-256: ace6b688764827c4d7083e571171294d3e610db6629909679cf25689da69b3fe

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