

Commissioner of Income-tax, West Bengal-I, Calcutta v. Simon Carves Limited

Civil Appeal No.1313 of 1973

[1977] 1 SCR 207 | 1976-08-17

Whether a legally permissible and properly exercised rule 33 computation choice produces escaped income under former section 147(b) merely because a successor Officer can use another permissible method yielding a higher assessment.

147(b) (former information-based reopening provision actually applied)

Three-judge bench | H.R. Khanna, J. | R.S. Sarkaria, J. | Jaswant Singh, J.

Assessment years: 1959-60

Historical reopening and lawful alternative-method limits

This judgment applies former section 147(b) to reassessment for AY 1959–60 within the 1922 section 42/rule 33 computation framework. The result depends on both methods being legally permissible and no demonstrated defect in the original discretion; it does not require the lowest-tax method or protect genuine assessment errors. The Tribunal upheld initiation while preserving justified adjustments, and the Supreme Court's operative order upheld the High Court and dismissed the Revenue appeal with costs, without a fresh assessed figure or express notice-quashing order. Rule 10 is identified as corresponding law, not separately adjudicated under a later version. The 2024 Rajeev Bansal check is limited to its quotation of the fair quasi-judicial administration principle. Original PDF unchanged. Comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

The respondent non-resident company worked as construction engineers in India and elsewhere. For AY 1959–60, corresponding to the financial year ending 31 March 1959, the Income-tax Officer originally assessed total income of Rs.21,49,169 on 31 May 1960. The return included an auditor's certificate of trading results. The Durgapur contract with Hindustan Steel Ltd. was supported by a provisional income estimate related to tax deducted by that company; the Officer computed that contract's income at Rs.5,33,164 and the other contracts at Rs.16,16,005 on audited statements (physical pages 2–3/SCR 208 F–209 A).

On 5 November 1962 the Officer initiated proceedings under section 147(b) of the 1961 Act, completing reassessment on 29 February 1964 at Rs.69,85,097. His stated grounds concerned the proportion of operations in India and sterling payments, changed depreciation, and receipt-basis income. The Durgapur figure remained Rs.5,33,164; the other contracts were put at Rs.64,51,933. The Court recorded that the difference arose from replacing one rule 33 method with another (physical pages 2–3/SCR 208 G–209 E).

The Appellate Assistant Commissioner held the reopening bad and the method substitution impermissible, while observing that income of Rs.22,23,231 could be computed without the assessee's objection. The Tribunal disagreed on initiation, which it held valid, but upheld the objection to changing between permissible methods. It directed use of the original method subject to justified adjustments, including excess depreciation. On the Revenue's reference, the Calcutta High Court answered the method-substitution question for the assessee. The Revenue's certificate appeal arose from the High Court's 7 September 1972 order in Income Tax Reference No.208 of 1966 (physical page 2/SCR 208 C; physical pages 3–4/SCR 209 F–210 F).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court placed the computation issue in its actual statutory setting. Under 1922 section 4(1)(c), non-resident income included income accruing, arising or deemed to accrue or arise within the taxable territories. Section 42(1) addressed business-connection income; section 42(3) limited deemed income, where operations were not wholly within the territories, to profits reasonably attributable to operations there. The original Officer apparently considered these criteria insufficient for ascertainment and used rule 33 (physical pages 4–5/SCR 210 G–211 C).

Rule 33 applied where the Officer considered that the actual relevant non-resident income could not be ascertained. It allowed a reasonable percentage of local turnover, an amount bearing the same proportion to total business profits as local receipts bore to total receipts, or another manner the Officer considered suitable. Subject to the rule's other conditions, the Officer could choose among those methods. Both parties and the referred question proceeded on the premise that the original and replacement methods were lawful alternatives. The Court did not determine that premise afresh from an independent accounting exercise, prescribe a universal best method, or confer the choice on the assessee (physical pages 5–6/SCR 211 C–212 D).

The Revenue argued that the lower yield under the first lawful method was itself escaped income. The Court rejected that proposition. Rule 33 vested discretion to be exercised properly and judiciously. There was no material that the original choice was improper or that the Officer acted with an oblique motive. A lower liability than another lawful method would produce did not show misuse of discretion. Taxing authorities exercise quasi-judicial powers: they must collect tax legitimately due while acting fairly, rather than assume that only the most revenue-favourable choice is proper (physical page 6/SCR 212 D–H).

On that accepted premise, the original computation was legally correct and not vitiated by error. The Court explained that former section 147(b) contemplated an error causing escaped income that became manifest through subsequent information. The lawful method choice here did not provide such an error, under either former section 147(b) or corresponding 1922 section 34(1)(b). A reassessing Officer does not sit in appeal over the original Officer and cannot substitute a different opinion on the computation method merely to increase the tax yield. The Revenue also invoked oversight, inadvertence or mistake in the original assessment; the Court found this case outside those factual categories, rather than deciding that every such error would or would not support reopening (physical page 7/SCR 213 A–D).

The procedural distinction matters. The Tribunal had upheld initiation and preserved justified adjustments while rejecting the alternative method. The Supreme Court decided the referred method-substitution issue and dismissed the Revenue's appeal. Its reasons do not supply a fresh quantified assessment, erase the Tribunal's recounted adjustment qualification, or establish a present-day reopening deadline (physical page 4/SCR 210 A–C; physical page 7/SCR 213 A–E).

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

03 JUDICIAL DECISION

The Supreme Court upheld the High Court's judgment and dismissed the Revenue's appeal with costs. The answer against substituting the alternative computation method remained in the assessee's favour. The Court did not separately quash notices, order a remand, prescribe a final assessed income or quantify the costs (physical page 7/SCR 213 E).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Revenue appeal dismissed with costs; High Court judgment upheld

Final determination of the referred historical reassessment/computation issue; no Supreme Court recomputation of taxable income

Depends on two legally permissible methods, satisfaction of rule 33's conditions and no demonstrated improper exercise of the original discretion. No general immunity for erroneous assessments or automatic application to later statutory versions.

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

05 AKHB REVIEW POINT

Separate a genuinely erroneous assessment from dissatisfaction with the yield of a lawful discretionary method. Test the actual computation provision, its entry conditions, the legal permissibility of both methods and the record of the original exercise of discretion. The fairness principle does not require an Officer to select the lowest-tax method; it rejects the assumption that only the highest-tax choice is judicious. Preserve the distinction between initiation of reassessment, the permitted scope of recomputation and any expressly retained adjustments.

Bounded later primary treatment: in *Union of India v. Rajeev Bansal*, decided on 3 October 2024, paragraph 26 directly quotes Simon Carves on fair, non-partisan exercise of quasi-judicial tax powers (physical pages 34–35/SCR 1666–1667, footnote 49). That specific reuse supports the general administrative principle. It does not show that Rajeev Bansal adopted the old rule 33 computation holding for a later reopening regime, and the rest of that judgment was not comprehensively reviewed for this note.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, actual date and three-judge bench

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 207 heading

Source role: reported metadata

2.

Topic: Appeal docket, High Court order, reference question, AY and assessment dates

Source url: [Open cited source](#)

Pdf pages: 2

Paragraphs: SCR 208 C-H

Source role: reported metadata and judicial text

3.

Topic: Original figures, reassessment grounds, contract totals and AAC result

Source url: [Open cited source](#)

Pdf pages: 3

Paragraphs: SCR 209 A-H

Source role: judicial text

4.

Topic: Tribunal distinguishes valid initiation from method substitution and allows justified adjustments

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: SCR 210 A-C

Source role: judicial text

5.

Topic: High Court answer and Revenue contention

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: SCR 210 C-F

Source role: quoted high court and counsel

6.

Topic: 1922 charging/attribution framework and rule 33 prerequisites and three methods

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 210 G-212 B

Source role: judicial text

7.

Topic: Common premise, lawful discretion and fair quasi-judicial administration

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: SCR 212 B-H

Source role: judicial text

8.

Topic: Former section 147(b), error, no appellate substitution, rejected oversight premise and exact relief

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: SCR 213 A–E

Source role: judicial text

9.

Topic: Bounded later direct quotation of fair quasi-judicial administration principle

Source url: [Open cited source](#)

Pdf pages: 34; 35

Paragraphs: Paragraph 26 and footnote 49; SCR 1666–1667

Source role: later judicial text bounded

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The reassessment was actually initiated on 5 November 1962 under former 1961 section 147(b), although AY 1959–60, section 42 and rule 33 belong to the earlier statutory framework. The source does not decide a section 297 transition question. The report separately recounts receipt-basis and tax-deduction references as printed at SCR 209; neither is an independent holding.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

H.R. Khanna, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (former section 147(b), actual reassessment); Indian Income-tax Act, 1922 and Income-tax Rules, 1922 (underlying non-resident computation)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: sections 4(1)(c), 42(1) and 42(3) (non-resident income and reasonable attribution), and 34(1)(b) (corresponding reopening provision discussed); Income-tax Rules, 1922: rule 33 (three alternative computation methods when actual income cannot be ascertained); Income-tax Rules, 1962: rule 10 (correspondence expressly identified in the reference question; no separate modern rule 10 holding)

SOURCE & VERIFICATION

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

Identified source rendition: 7 PDF pages; SHA-256

7158f3c3c8501039158e072d67266d3f753c026c343475128dd833d435bab110. Original bytes preserved.

Judicial body begins physical page 2/SCR 208 D (Khanna, J.) and ends physical page 7/SCR 213 E with dismissal and costs.

Page 1 and upper page 2 are reporter material, appellate metadata and appearances. 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; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

The judgment was delivered on 17 August 1976; 1977 is the SCR report year.

The 1977 report year differs from the actual 17 August 1976 judgment date. The caption image itself prints LIMITED at physical page 1/SCR 207 heading; the catalogue repeats that source typo. The case title is normalized to Limited.; The Tribunal held initiation valid but rejected method substitution and permitted justified adjustments. Its position must not be collapsed into the AAC's ruling that proceedings were bad.; Both computation methods were assumed legally permissible on the common case and referred question, and no improper discretion or oblique motive was shown.; Rule 10 of the 1962 Rules appears as a correspondence in the reference question; the computation actually examined was historical rule 33.; The source reports section 18(B) and section 4(1)(A) at SCR 209 while recounting computation material. This note does not silently recast those printed references as independent statutory holdings.; The operative relief is dismissal with costs, not an express notice-quashing order, tax refund, remand or new quantified assessment.

The Court expressly identifies AY 1959–60 and the corresponding financial year ending 31 March 1959 at physical page 2/SCR 208 F–G.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or certification of present law. The actual former section 147(b), 1922 section 42 and rule 33 setting must remain visible.

LATER TREATMENT

Source checked 2026-10-05. not_verified. One bounded later primary check actually made: Rajeev Bansal (3 October 2024), identity page 1 and text/images pages 33–35, especially paragraph 26 and footnote 49. Direct quotation concerns fair quasi-judicial administration only. No comprehensive citation history, statutory amendment chain, current-law certification or 2025 mapping verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 7](#)

SHA-256: 7158f3c3c8501039158e072d67266d3f753c026c343475128dd833d435bab110

[later judgment bounded treatment - PDF pages: 76](#)

SHA-256: 439111f46d4619d226ca3fc33f0e1e4776b37c86e36c75d13736e1a1653c2901

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.