

D. S. BIST & SONS, NAINITAL v. COMMISSIONER OF INCOME TAX, DELHI CENTRAL, NEW DELHI

Civil Appeal No. 1727 of 1972; Originating High Court proceedings: Income Tax Reference No. 30/67

[1979] 2 SCR 224 | 1978-11-03

Depreciation allowed to the predecessor HUF could not be treated as depreciation allowed to the successor firm for the historical balancing charge. The firm succeeded on that charge, while possible taxation on another ground, including capital gains, remained open.

3-judge bench | P. N. Bhagwati, J. | V. D. Tulzapurkar, J. | R. S. Pathak, J.

Limited success; other tax grounds open

The balancing charge failed. The Court left the Tribunal free to consider another basis of assessment, including the Revenue's capital-gains argument.

Operative context: Indian Income-tax Act, 1922; 3, 10(2)(vii), second proviso, 10(5)(b), 12B.

01 FACTS OF THE CASE

A father and son carried on a forest-contracting business as a Hindu undivided family. On its total disruption on 22 March 1956, they formed D. S. Bist & Sons and took over the running business. Three trucks had already been fully depreciated in the family's assessments. The firm later sold two for Rs. 12,000 and the third for Rs. 12,252.

For assessment year 1958-59, the officer brought the whole Rs. 24,252 to tax under the second proviso to section 10(2)(vii). The appellate authorities and Delhi High Court agreed, treating the transition as substantially a change in the family business's form because the individuals remained the same.

Source: [SCR 225 D-H;226 A-D](#)

02 DISCUSSION BY THE HON'BLE COURT

The balancing charge sought to recapture depreciation previously allowed to the assessee whose asset was sold. Section 10(5)(b) also referred to depreciation actually allowed to that assessee. On this record, the trucks entered the firm's ownership with nil value and no depreciation had been allowed to the firm.

The Court rejected the suggestion that taking over a going concern automatically carried over the family's depreciation history for this charge. It treated the firm as a distinct assessable entity under section 3, separate both from its partners and from the HUF. Identity of the human participants did not make depreciation granted in the family's computation an allowance to the firm.

The result did not establish that the sale proceeds escaped every tax provision. Revenue separately argued that section 12B could tax them as capital gains. The Court declined to decide whether that contention fell within the referred question: the Tribunal could consider another ground when disposing of the case consistently with the Supreme Court's judgment.

Source: [SCR 226 E-H;227 A-H;228 A-D](#)

03 JUDICIAL DECISION

The reference was answered for the assessee on the balancing-charge question and the appeal allowed with costs. The case returned to the Tribunal, with alternative grounds of assessment left open.

Source: [SCR 228 B-D](#)

04 OUTCOME / IN WHOSE FAVOUR

Appeal allowed; case returned for conforming disposal. Result: Assessee on the specified balancing charge. Costs: Appellant entitled to appeal costs. Scope: Second-proviso charge rejected; alternative capital-gains liability undecided. Limit: Distinct taxpayer and actual prior allowance under the 1922 Act.

Source: [SCR 228 B-D](#)

05 AKHB REVIEW POINT

Build an asset-level chain identifying each taxpayer, acquisition basis and depreciation actually allowed. Do not equate common partners or continued business operations with statutory tax identity. Check current succession, actual-cost and depreciation provisions separately, and record any alternative charging ground left for the Tribunal instead of describing this as complete tax exemption.

Source: [SCR 226 F-H;227 B-H;228 C-D](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

5-page retained public-mirror SCR report. The complete report was read as text and page images. Fresh remote authentication as a signed original is not claimed.

Open cited source rendition

The facts repeatedly identify AY 1958–59, but SCR 228 B prints 1957–58 in the conclusion. The note follows the detailed factual identification and preserves the conflict. The headnote refers to section 2 for distinct assessability; the judicial reasoning at SCR 227 E-G expressly uses section 3.

STATUTORY SCOPE

Indian Income-tax Act, 1922; 3, 10(2)(vii), second proviso, 10(5)(b), 12B.

The 2011 section 41(2) expressly links recapture to depreciation claimed under 32(1)(i). It is not a universal charge on every depreciable-asset sale. Later cost, succession and capital-gains rules require independent application.

Section 38(1)(b), read with 38(2)(b), requires depreciation claimed and allowed under 33(2), which concerns power-generation undertakings. It is not a general substitute for all modern disposal rules; Bist did not decide alternative capital gains.

The 2025 Act commenced 1 April 2026. Section 536 preserves 1961 proceedings/procedure for tax years beginning before that date and pending proceedings; compare the actually applicable law.

Related-section tags are research cross-references, not provisions decided in this judgment or verified mappings beyond the specific comparisons and source bounds below.

No automatic precedent carry-over or verified case-specific 2025 applicability is claimed.

LATER TREATMENT

Source checked 2026-10-07. No separate later judicial use is verified in this bounded review. No inference of absence of later treatment is made.

Comprehensive subsequent history and present-law applicability are not certified.

IDENTIFIED SOURCE LINKS

[Income-tax Act, 1961, as amended by Finance Act 2011; supplied DOR compilation](#)

Section 41(2); physical 306, printed 1.265. Selected text only; not current 1961 consolidation or image verification.

[Income-tax Act, 2025, as amended by Finance Act 2026](#)

Section 38(1)(b),(2)(b), physical 74–75 lines 2947–2957, 2977–2979;33(2) physical 64 lines 2547–2550. Selected web-extracted text; no raw-PDF/image verification or all-amendments certificate.

[Statutory comparison pinpoint](#)

Section 38(1)(b),(2)(b), physical 74–75 lines 2947–2957, 2977–2979;33(2) physical 64 lines 2547–2550.

[Statutory comparison pinpoint](#)

Section 1(3), physical 1; section 536(2)(c),(e), physical 584–585, extracted lines 24385–24408.

AI DISCLOSURE

AI-assisted research. The AKHB Review Point is editorial analysis, not part of the Court's judgment.

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