

H. D. Devasia & Co., Kerala v. Commissioner of Income Tax, Kerala

Civil Appeal Nos. 2716–2718 of 1972 / Civil Appeal Nos. 365–367 of 1978

[1979] 3 SCR 1271 | 1979-05-04

Whether a registered firm could itself carry forward its speculation losses for set-off against future speculation profits under the then sections 73 and 75.

67 (apportionment of registered firm income in the factual history) | 73(1), 73(2) and 73(4) (then speculation-loss set-off and carry-forward provisions) | 75(1) and 75(2) (then losses of registered firms) | 70, 71, 72 and 74 (cross-references in the quoted historical section 75)

Three-judge bench | N.L. Untwalia, J. | R.S. Pathak, J. | E.S. Venkataramiah, J.

Assessment years: 1964-65, 1965-66, 1966-67, 1967-68, 1968-69, 1969-70

Historical registered-firm loss regime; all six appeals covered

This decision applies the then sections 73 and 75 to AYs 1964-65 through 1969-70. It denies the registered firm's own carry-forward and requires apportionment to partners under that historical scheme; its eight-year reference is also period-specific. Preserve both appeal groups and the one-set hearing-fee order. Comprehensive later treatment, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

The assessee was a registered firm trading in several commodities at several places in Kerala and also carrying on speculation business. The Income Tax Officer determined speculation losses of Rs.40,510 for AY 1964-65 and Rs.598 for AY 1965-66 and a speculation profit of Rs.1,36,264 for AY 1966-67. When apportioning the firm's income under section 67, he apportioned both losses and the later profit among the partners. The firm claimed that its speculation losses should instead remain with it and be carried forward for set-off against its own speculation profits (physical pages 2–3/SCR 1272 F–1273 B).

The Appellate Assistant Commissioner accepted the firm's argument by relying on Kantilal Nathuchand. The Tribunal reversed, distinguishing the 1922 Act rule from sections 73 and 75 of the 1961 Act. The Kerala High Court answered the reference for the Revenue. Civil Appeals 2716–2718 of 1972 concerned those three years. Identical questions for AYs 1967-68, 1968-69 and 1969-70 led to Civil Appeals 365–367 of 1978. All six appeals of the same assessee were heard together (physical pages 2–3/SCR 1272 F–1273 H).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court first explained the different statutory foundation of Kantilal Nathuchand. That decision concerned the apparent conflict between the two provisos to section 24(1) of the 1922 Act. Under that scheme, speculation losses of a registered firm kept apart in computing total income could remain with the firm for carry-forward and set-off under section 24(2). Chapter VI of the 1961 Act made a substantial change. The Court confined the present question to speculation-loss set-off and reproduced the relevant sections 73 and 75 as they stood at the material time (physical page 4/SCR 1274 A–D).

Section 73(1) restricted speculation-loss set-off to profits and gains of another speculation business. Section 73(2) allowed unabsorbed speculation losses to be carried forward, but expressly made that permission subject to the other provisions of the Chapter. The Court noted the then eight-year limit in section 73(4). Those statements must be read with the historical registered-firm provisions, not detached as a present-day rule (physical pages 4–5/SCR 1274 E–1275 D).

Section 75(1) required a registered firm's loss which could not be set off against its other income to be apportioned among its partners; the partners alone were entitled to the relevant set-off and carry-forward. Section 75(2) placed the point beyond doubt by providing that section 73(2), among the listed provisions, did not entitle the registered firm itself to carry forward and set off its loss. The Tribunal and High Court were therefore right: Kantilal Nathuchand's rule under the 1922 Act could not be applied to these assessments under the different 1961 Act provisions. The Court also identified the same view in Dhanji Shamji and Choudhary Cotton Ginning and Pressing Factory (physical page 5/SCR 1275 A–F).

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

03 JUDICIAL DECISION

The Court dismissed all six appeals with costs, with only one set of hearing fee. It upheld the refusal to allow the registered firm itself to carry forward its speculation losses for set-off against future speculation profits under the statutory version adjudicated (physical page 5/SCR 1275 G).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

All six assessee appeals dismissed with costs; hearing fee one set only

Final reasoned answer on the registered firm's own carry-forward entitlement under the then sections 73 and 75

No remand or reserved issue is stated. This does not determine an individual partner's eventual utilisation of apportioned losses or certify a later firm-taxation or loss-carry-forward regime.

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

05 AKHB REVIEW POINT

The decisive words are the subordination of section 73(2) to the rest of Chapter VI and the partner-only allocation imposed by the then section 75. A seemingly comparable loss decision under the 1922 Act cannot be carried across without testing the changed text. For historical assessments, separate the firm's computation, apportionment and the partners' eventual set-off; the judgment decided the firm's claimed carry-forward entitlement. The eight-year reference and registered-firm rules belong to the statutory period before the Court.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, three-judge bench and both groups of appeals

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR 1271 heading; 1272 C–F

Source role: reported metadata and judicial text

2.

Topic: Six assessment years, figures, allocation under section 67 and referred question

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 1272 F–1273 H

Source role: judicial text

3.

Topic: Kantilal Nathuchand distinguished under changed statutory scheme

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 1274 A–D; 1275 E–F

Source role: judicial text

4.

Topic: Historical sections 73 and 75, then eight-year limit and partner-only carry-forward

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 1274 D–1275 F

Source role: judicial text

5.

Topic: All six appeals dismissed with costs; one hearing fee

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: SCR 1275 G

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

N.L. Untwalia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (historical provisions adjudicated in this judgment)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: section 24(1), its first and second provisos, and section 24(2), as considered in the distinguished Kantilal Nathuchand decision

SOURCE & VERIFICATION

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

Identified source rendition: 5 PDF pages; SHA-256

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Judicial body begins physical page 2/SCR 1272 F and ends page 5/SCR 1275 G. Page 1 and upper page 2 contain reporter material and appellate metadata. No neighbouring judgment.

[Open cited source rendition](#)

The operative rule concerns sections 73 and 75 as they stood for the six stated assessment years, including the then registered-firm and eight-year provisions.; The source heading is H. D. Devasia & Co.; its reference to the underlying reported High Court decision varies in initials and citation between reporter material and judicial text. The Supreme Court heading, six appeal numbers and actual date are the identity anchors.; Catalogue metadata supplied only Civil Appeal 2716/1972. The physical report establishes both groups, 2716–2718 of 1972 and 365–367 of 1978.; The judicial body, rather than OCR misreadings of section 75 as section 15 in the headnote, controls.; Costs are awarded in all appeals, with hearing fee limited to one set. No refund, quantified recovery or partner-specific relief is ordered.

The first three assessment years concern Civil Appeals 2716–2718 of 1972; the next three concern Civil Appeals 365–367 of 1978. All six years are expressly stated in the judicial body. The earlier assessment years discussed in Kantilal Nathuchand are not this assessee's years.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no present-law certification. Identify the applicable statutory version and procedural route separately.

LATER TREATMENT

Source checked 2026-10-05. not_verified. No later primary treatment of this decision has been verified in this batch. Kantilal Nathuchand, Dhanji Shamji and Choudhary Cotton are described only as discussed in this primary judgment; their originals were not independently read here. No comprehensive citator search, current statutory validation, complete amendment history or 2025 mapping.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 5](#)

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