

Malabar Fisheries Co., Calicut v. Commissioner of Income Tax, Kerala

Civil Appeal Nos. 196–199 of 1973

[1980] 1 SCR 696 | 1979-09-19

Whether allocation of partnership assets among erstwhile partners after dissolution was an otherwise transfer by the dissolved assessee firm, permitting withdrawal of development rebate under the then sections 34(3)(b) and 155(5), read with section 2(47).

34(3)(b) (historical development-rebate clawback) | 155(5) (historical recomputation and withdrawal procedure) | 2(47) (transfer definition as then enacted) | 33 (development rebate referred to in the judicial narrative)

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

Assessment years: 1960-61, 1961-62, 1962-63, 1963-64

Historical rebate clawback; later capital-gains regimes are distinct

Malabar Fisheries prevents the development-rebate withdrawal attempted under the then sections 34(3)(b)/155(5) on this dissolution distribution. It is not a blanket current capital-gains exemption for dissolution or reconstitution, and contribution of an individual's assets to a firm was left open. Mansukh Dyeing is a bounded later-regime comparison only, with source section-number inconsistencies disclosed. Comprehensive later treatment, post-2021 rules, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

The four-partner firm, constituted on 1 April 1959, carried on six businesses. It dissolved on 31 March 1963. Under the dissolution arrangement, one partner took Malabar Fisheries Co.; two others took the remaining five businesses; the fourth received Rs.3,81,082 in lieu of his shares in all the business assets. The judicial narrative states that development rebate had been allowed for machinery over AYs 1960-61 to 1963-64 (physical page 4/SCR 699 E–H).

Treating the dissolution distribution as a sale or transfer within the statutory period, the Income-tax Officer withdrew the rebate through section 155(5) amending orders against the dissolved firm. The Appellate Assistant Commissioner upheld those orders on 24 July 1964. The Tribunal, by a common order of 6 January 1970, allowed the firm's appeals because the arrangement adjusted the former partners' mutual rights. On reference, the Kerala High Court answered the transfer question against the assessee and found the separate adjustment question unnecessary. Civil Appeals 196–199 of 1973 challenged that common High Court decision of 14 July 1972 in I.T. References 115–118 of 1970 (physical pages 4–6/SCR 699 B–701 C).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court framed the issue under the 1961 Act, not merely the older Act involved in the precedents. Quoting the historical section 34(3)(b), it identified three requirements: sale or other transfer of the ship, machinery or plant; a transaction by the assessee to a person; and occurrence before the stipulated eight-year period expired. The quoted provision covered allowance under section 33 or corresponding 1922 provisions. Section 155(5) supplied the recomputation mechanism; the Court recited its then four-year amendment period. Section 2(47) extended transfer to relinquishment and extinguishment of rights, but that extension still had to apply to the legal transaction proved (physical pages 7–8/SCR 702 E–703 F).

Dewas Cine Corporation and Bankey Lal Vaidya were 1922-Act decisions. The Court considered whether the 1961 definition changed their account of dissolution distributions. Drawing on partnership law, it distinguished an ordinary partnership from a corporation: the firm did not own a separate interest apart from its partners which could be extinguished in the asserted manner. After liabilities were discharged, distribution of the partnership assets represented adjustment of the partners' joint or common rights. No extinguishment of a separate right of the firm, and thus no transfer on that theory, occurred (physical pages 8–14/SCR 703 G–709 F).

A second, independent reason was that distribution followed dissolution, taking accounts and discharge of liabilities; it was an adjustment inter se among the former partners, not a transfer by the dissolved assessee firm to another person. The Court rejected the High Court's view that the deed made distribution simultaneous with dissolution and attributable to the firm (physical page 15/SCR 710 B–D).

The converse situation of an individual bringing assets into a partnership was expressly left undecided. The Court did not endorse or disapprove the Karnataka High Court's Vasanaik decision on that different transaction (physical pages 14–15/SCR 709 F–710 A).

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

03 JUDICIAL DECISION

All four assessee appeals were allowed. The Court held section 34(3)(b) inapplicable and upheld the Tribunal's view against withdrawal of development rebate. The Revenue was directed to pay the appellant the costs of the appeals (physical page 15/SCR 710 D–E).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee dissolved firm

Civil Appeals 196–199 of 1973 allowed; Tribunal's view restored/upheld; section 34(3)(b) withdrawal unavailable on this dissolution distribution; Revenue to pay appeal costs

Final reasoned decision on the historical development-rebate withdrawal question

No present capital-gains or reconstitution exemption; no decision on contribution of an individual's assets to a firm; later deeming and charging provisions require their own statutory analysis.

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

05 AKHB REVIEW POINT

Identify the charge or clawback actually in issue before applying a broad statement about transfer. Malabar Fisheries decided development-rebate withdrawal under the then sections 34(3)(b) and 155(5), with section 2(47) supplying a definition. Its separate reasoning that the transfer must be by the assessee is as important as its partnership-property analysis. The presence of AYs 1960-61 and 1961-62 does not make the decision exclusively 1922 law: the body and the express wording quoted at SCR 702 identify the operative 1961 withdrawal scheme.

A bounded later primary comparison is CIT–23 v. Mansukh Dyeing and Printing Mills (24 November 2022), concerning AYs 1993-94 and 1994-95 under the later section 45(4) regime. In paragraph 7.4 the Supreme Court quoted A.N. Naik Associates, whose discussion specifically connected that statutory change to Malabar Fisheries; in paragraphs 7.5–7.6 it applied the later provision to the concrete revaluation/partner-credit facts and affirmed Naik. This is a reason to keep the two statutory settings distinct, not to label Malabar wholly overruled or to assume that every book revaluation is taxable. Mansukh's analysis of those earlier assessment years does not certify the post-2021 dissolution/reconstitution regime, any section 9B interaction, or the Income-tax Act, 2025.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Actual date, bench and full four-appeal group

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: SCR 696 heading; SCR 699 B–D

Source role: reported metadata and judicial text

2.

Topic: Business allocation, four years and proceedings

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 699 E–701 C

Source role: judicial text

3.

Topic: Operative 1961 provisions, express 1922-allowance reference and conditions

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR 702 E–703 F

Source role: judicial text

4.

Topic: Older Act precedents and legal partnership-property analysis

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11; 12; 13; 14

Paragraphs: SCR 703 G–709 F

Source role: judicial text

5.

Topic: Converse asset contribution reserved

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: SCR 709 F–710 A

Source role: judicial text

6.

Topic: Independent by-the-assessee ground and final relief/costs

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: SCR 710 B–E

Source role: judicial text

7.

Topic: Bounded later statutory comparison, Naik quotation and case-specific application

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12; 13; 14; 15

Paragraphs: SCR 793–799; paragraphs 6–8, particularly 7.4–7.6

Source role: bounded later judicial statutory comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

V.D. Tulzapurkar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (historical development-rebate withdrawal provisions, including their express reference to corresponding 1922 allowances)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Partnership Act, 1932: sections 14, 15 and 48 in the partnership-property analysis; Code of Civil Procedure: Order XXX (procedural ability to sue in firm name); Indian Income-tax Act, 1922: corresponding rebate provisions referenced in quoted section 34(3)(b); section 10(2)(vii) second proviso and section 12B(1) in earlier precedents

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 15 PDF pages; SHA-256

462d8d5901ab34df5e28834b8d1c644f32d74a23b09fa9d33d858ac16aaa2ea2. Original bytes preserved.

Unnumbered judicial body begins physical page 4/SCR 699 D and ends page 15/SCR 710 E. Pages 1–3 and top of page 4 are reporter material; appellate preface is page 4 B–C. No neighbouring judgment.

Open cited source rendition

Actual decision date is 19 September 1979, not the 1980 SCR volume year. The exact appellate group is Civil Appeals 196–199/1973, not only the lead appeal shown in catalogue metadata.; The judgment states AYs 1960-61 to 1963-64 and actually adjudicates the 1961 withdrawal scheme. No separate transition ruling or Act-by-year allowance allocation is inferred.; The 1922 balancing-charge and capital-gains decisions are precedents discussed, not the operative charging provisions in these appeals.; The Court expressly reserved the converse contribution-of-assets issue raised through Vasanaik.; Mansukh is used as a bounded later statutory comparison. Its paragraph 7.2 contains inconsistent section references (2(47)(ii) and 47(ii)); those lines are not used here as an independently verified amendment crosswalk.

All four years are expressly stated in the judicial body. The Court actually applies 1961 sections 34(3)(b), 155(5) and 2(47); the quoted withdrawal provision expressly also reaches allowances under corresponding 1922 provisions. No separate section 297 ruling or allocation of each original allowance to a particular Act is invented.

STATUTORY SCOPE

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

LATER TREATMENT

Source checked 2026-10-05. not_verified. Bounded later primary comparison only: Mansukh Dyeing, all 15 physical text pages read for context, rendered cover and pages 9–15 checked, with relied-on statutory comparison in paragraphs 6–8, especially paragraph 7.4 quoting Naik's discussion of Malabar and paragraphs 7.5–7.6. This is not a comprehensive citator, legislative-Gazette history or current-law certification.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 15

SHA-256: 462d8d5901ab34df5e28834b8d1c644f32d74a23b09fa9d33d858ac16aaa2ea2

later judgment bounded statutory comparison - PDF pages: 15

SHA-256: ce62faef7ee416371d291d12e7af4d2cd9c42d691a267744fe54f3b868210bf2

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