

NIRMAL TRADING COMPANY v. COMMISSIONER OF INCOME TAX, CENTRAL (CALCUTTA)

Civil Appeal No. 2310 of 1972; originating High Court reference: Income Tax Ref. No. 101/62
SCR pages 900-901; reporter year/volume not shown in supplied extract | 1979-10-10

Transactions settled through delivery orders and cheques, with no evidence or suggestion of actual delivery to the assessee or later purchasers, were speculative under Explanation 2 to section 24(1) of the 1922 Act. The claimed loss could not receive the requested ordinary set-off.

2-judge bench | N. L. Untwalia, J. | R. S. Pathak, J.

A delivery order is not proof of actual delivery

The conclusion rests on the absence of any evidence or plea of actual delivery. The decision does not dispense with examining the real transaction, applicable statutory exceptions or the distinction between contract settlement and a separately established breach loss.

Operative context: Indian Income-tax Act, 1922; historical sections 24(1) Explanation 2, 66A(2).

01 FACTS OF THE CASE

Nirmal Trading dealt in paper, hessian and B. Twill. For assessment year 1955-56, the Tribunal treated certain sale-and-purchase transactions as non-speculative and directed that the resulting loss be set off under section 24(1). At Revenue's instance it referred the question whether the Rs.1,03,688 loss arose from speculative transactions within Explanation 2 and was consequently ineligible for that set-off. The Calcutta High Court answered in Revenue's favour.

The transactions involved several parties but were settled by handing over delivery orders and paying by cheque. There was neither evidence nor a plea that the goods were actually delivered to Nirmal Trading or to subsequent purchasers. The assessee's case throughout was that delivery orders themselves constituted actual delivery.

Source: [SCR 900 G-901 D](#)

02 DISCUSSION BY THE HON'BLE COURT

The Supreme Court upheld the High Court by applying Davenport & Co. The statutory test concerned how the contracts were settled, and the evidence here showed transfer of delivery orders rather than actual goods. Payment by cheque did not fill that evidentiary gap.

The assessee invoked Raghunath Prasad Poddar, but the Court explained that Davenport had overruled that decision. It also gave a separate reason why the argument failed on this record: nobody had suggested ultimate actual delivery at any point in the chain. The litigation therefore did not present a proved delivery to an ultimate purchaser requiring a fresh factual inquiry.

This is a short, reasoned application of the delivery requirement to the established facts. It is not an unreasoned dismissal, but its compact reasoning should not be expanded into findings it never made. The Court did not decide a claim involving damages for an independently established breach, an identified statutory exception, or evidence of physical delivery overlooked by the authorities. It decided the asserted sufficiency of passing delivery orders in these transactions.

Source: [SCR 901 D-F](#)

03 JUDICIAL DECISION

The Court dismissed the assessee's appeal with costs and left the High Court's answer intact. The transactions attracted Explanation 2 to section 24(1), and the Rs.1,03,688 loss did not qualify for the ordinary set-off sought. That treatment is specific to the claimed set-off; it is not a declaration that the loss could never be dealt with under any statutory loss provision.

Source: [SCR 901 F-G](#)

04 OUTCOME / IN WHOSE FAVOUR

Assessee's appeal dismissed; adverse reference answer sustained. Result: Revenue. Costs: Appeal dismissed with costs. Scope: The speculative classification and requested set-off were finally resolved. Limit: No evidence or suggestion of actual delivery; only delivery orders and cheque payments passed.

Source: [SCR 901 G](#)

05 AKHB REVIEW POINT

Build the settlement evidence before arguing from commercial labels. Identify goods, contractual obligations, delivery records and the actual recipients, and distinguish payment from delivery. A document of title alone did not satisfy this case's test. For later years, check the exact version of section 43(5) and its exceptions. Also distinguish settlement of a trading contract from compensation or unrecoverable advances after breach, rather than assuming that every non-delivery loss has the same statutory character.

Source: [SCR 901 C-F](#)

SOURCE & VERIFICATION

Original reported Supreme Court judgment

2-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

Judgment dated 10 October 1979; the retained asset identifier begins 1980. The two-page extract prints SCR pages 900-901 but no reporter year/volume, so no unprinted SCR volume is asserted in the verified identity. It is a separate appeal from Jute Investment, decided the same day.

STATUTORY SCOPE

Indian Income-tax Act, 1922, section 24(1) Explanation 2, section 66A(2).

Section 43(5) retains an actual-delivery-based definition but includes its own hedging, jobbing/arbitrage and qualifying-derivative exceptions. The checked official version is 2021; the applicable assessment-year text must be established independently.

Section 66(31) and (33) in the checked 21 August 2025 statutory reproduction provides a related definition with specified exceptions. Official current consolidation was not verified; this is a bounded textual comparison, not automatic application of the historical judgment.

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

LATER TREATMENT

Source checked 2026-10-07. ITO v. SSJ Commodities (P) Ltd., Mumbai Tribunal, 27 November 2018, records the Assessing Officer's reliance on Nirmal Trading and Jute Investment under section 43(5). The Tribunal ultimately treated the failed supply and unrecoverable advance as a business loss. This is a documented later citation in the procedural history, not an adoption of Revenue's characterization.

Checked SSJ Commodities paragraphs 6-12 and the quoted appellate discussion. The actual citing actor was the Assessing Officer; the Tribunal rejected the speculative characterization on the substance of that failed-supply transaction. No later Supreme Court endorsement, reversal or comprehensive citator status is claimed.

IDENTIFIED SOURCE LINKS

[ITO v. SSJ Commodities \(P\) Ltd. \(2018-11-27\), nonofficial HTML judicial reproduction](#)

Judicial paragraphs 6-12, including the Assessing Officer citation at reproduced pages 6-7 and the Tribunal's own reasoning at pages 10-11; HTML lines 91-141. No raw PDF/image review.

[1961 Act section 43\(5\), provisos and definitions in Explanations](#)

1961 Act section 43(5), provisos and definitions in Explanations; official historical version labelled 2021. Bounded comparison, not all subsequent amendments.

[Nonofficial statutory reproduction: 2025 Act section 66\(31\), \(33\), statutory HTML reproduction under version dated 21 August 2025](#)

2025 Act section 66(31), (33), statutory HTML reproduction under version dated 21 August 2025; not an authenticated official current consolidation.

AI DISCLOSURE

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