

Commissioner of Income Tax, U.P. v. Shah Sadiq and Sons

Civil Appeal No. 1598 (NT) of 1974

[1987] 2 SCR 942 | 1987-04-14

Whether the historical section 75 scheme and repeal/savings provisions of the 1961 Act extinguished a registered firm's accrued 1922-Act right to carry forward speculation losses and set them off against AY 1962-63 speculation profits.

75(1)-(2) (historical losses of registered firms) | 297(2), particularly 297(2)(b) (repeal and savings)

Two-judge bench | Sabyasachi Mukharji, J. | S. Natarajan, J.

Assessment years: 1962-63

Saved pre-repeal losses; historical section 75 and source discrepancies

The holding preserves an already accrued 1922-Act speculation-loss right against the particular 1961-Act section 75/297 scheme. It is not a perpetual exemption from later legislation: an express or necessarily implied contrary intention can displace accrued rights. The report prints both Rs 58,102 and Rs 59,102 for the disputed-year profit and contains an inconsistent section 75 assessment-year recital; no precise remaining-loss balance is certified. Costs of Rs 2,500 were payable to amicus curiae. Later treatment and present-law/2025 mapping remain unverified.

01 FACTS OF THE CASE

The assessee partnership was a registered firm in AYs 1960-61, 1961-62 and 1962-63. It incurred speculation losses of Rs 60,054 and Rs 6,839 in the first two years, available for carry-forward against speculation profits. For AY 1962-63 it sought to set both losses against that year's speculation profit. The report first states Rs 58,102 and later prints Rs 59,102 on the same judicial page; the discrepancy is retained rather than a precise net carry-forward balance being invented. Either printed profit figure was wholly absorbed by the stated earlier losses (physical pages 3-4 / SCR 944-945).

The ITO refused the firm's claim on the ground that, as a registered firm, only its partners could carry forward and set off the losses. The first appeal failed. The Tribunal allowed the claim because the accrued right arose under the 1922 Act and was not displaced merely by repeal. The Allahabad High Court, in its judgment dated 26 February 1971 in I.T. Reference No. 92 of 1966, upheld the firm's entitlement using section 6 of the General Clauses Act. Revenue appealed. The assessee did not appear at the hearing; Dhananjoy Chandrachud assisted as amicus curiae (physical pages 3-5, 10-11 / SCR 944-946, 951-952).

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

02 DISCUSSION BY THE HON'BLE COURT

Section 24(2) of the 1922 Act gave the firm an accrued, vested right to carry forward its unabsorbed speculation losses. Revenue relied on historical section 75 of the 1961 Act, under which losses of a registered firm were apportioned among the partners and the firm was not entitled to carry forward under the identified provisions. It argued that AY 1962-63 had to be assessed under that new scheme (physical pages 5–6 / SCR 946–947).

The Court rejected the view in the separate Allahabad decision *Mangiram Gopi Chand*, 111 ITR 807, that section 297(2) was an exhaustive code whose failure expressly to save these losses extinguished the right. Neither section 297(2)(b) nor any other sub-clause showed such a contrary legislative intention. Historical section 75(2) introduced a different loss scheme but did not, expressly or by necessary implication, destroy already accrued rights under section 24(2) (physical pages 6–10 / SCR 947–951).

Under section 6(c) of the General Clauses Act, an accrued right survives repeal unless the later statute takes it away expressly or by necessary implication. An express savings clause need not list every right that survives. What was omitted from section 297's express savings was not thereby automatically destroyed. The Court used *T.S. Baliah and B.P. (India) Ltd.* to support that approach; their prosecution and business-discontinuance facts were distinct from this speculation-loss claim (physical pages 8–10 / SCR 949–951).

Reliance Jute Mills, *Helen Rubber Industries* and *Karimtharuvi Tea Estate* did not resolve this controversy: the Court distinguished their amendment, territorial-tax and timing settings from the survival of the vested right here. It accepted the judgment under appeal and expressly rejected *Mangiram Gopi Chand*'s contrary view. The governing formulation includes express words or necessary implication; the shorter statement later on page 10 about rights taken away expressly is not treated as eliminating the necessary-implication qualification stated in the same reasons (physical pages 7–10 / SCR 948–951).

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

03 JUDICIAL DECISION

Revenue's appeal was dismissed. The High Court's answer permitting the earlier speculation losses to be set off against AY 1962-63 speculation profits stood affirmed. Costs were assessed at Rs 2,500, expressly payable to the *amicus curiae*. The order did not make a new quantified assessment or direct those costs to the absent assessee (physical pages 10–11 / SCR 951–952).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Revenue appeal dismissed; costs Rs 2,500 to be paid to amicus curiae

Final recognition of the saved accrued speculation-loss right for the AY 1962-63 claim

Concerns losses already accrued under the 1922 Act and the particular 1961-Act repeal/new scheme; no general immunity of all loss carry-forwards from later express or necessarily implied legislative change.

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

05 AKHB REVIEW POINT

Start with when and under what provision the right accrued, then examine the repealing enactment for an express or necessarily implied contrary intention. A general rule that the assessment-year law governs does not by itself answer whether repeal destroyed an existing substantive right. Section 297 and the historical section 75 scheme were actually decided, so an old loss year does not make this a 1922-only authority.

Keep the firm's saved pre-repeal claim separate from ordinary losses arising under the new registered-firm scheme. The decision does not allow every taxpayer to freeze all historical loss rules indefinitely, nor does it dispense with proof of the accrued right and applicable conditions. Preserve both earlier loss years, the disputed-year profit discrepancy, the necessary-implication qualification and the unusual amicus costs direction. Current legislation and comprehensive later treatment require separate verification.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, author and full docket

Source url: [Open cited source](#)

Pdf pages: 1; 3

Reporter pinpoint: SCR 942, 944

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: reported metadata and judicial text

2.

Topic: Loss years, figures, profit discrepancy, reference and appellate path

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5

Reporter pinpoint: SCR 944–946

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

3.

Topic: Historical section 75 scheme and Revenue position

Source url: [Open cited source](#)

Pdf pages: 5; 6

Reporter pinpoint: SCR 946–947

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

4.

Topic: Section 297 and rejection of exhaustive-savings approach

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Reporter pinpoint: SCR 947–949

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

5.

Topic: Section 6(c), section 75 and vested-right holding

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10

Reporter pinpoint: SCR 949–951

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

6.

Topic: Distinguished authorities and Mangiram Gopi Chand rejection

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Reporter pinpoint: SCR 948–951

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

7.

Topic: Dismissal and exact amicus costs direction

Source url: [Open cited source](#)

Pdf pages: 10; 11

Reporter pinpoint: SCR 951–952

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Sabyasachi Mukharji, J.

OTHER STATUTORY CONTEXT

Indian Income-tax Act, 1922, section 24(2): source of accrued right to carry forward speculation losses; General Clauses Act, 1897, section 6(c): preservation of accrued rights absent contrary legislative intention; General Clauses Act section 6(e) and 1922 Act sections 25(3), 25(4) and 52 arise in cited authorities, not independent disputes decided here

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

ASSESSMENT-YEAR CONTEXT AND LIMITS

AY 1962-63 is the set-off year under appeal; speculation losses arose in AYs 1960-61 and 1961-62 under the 1922 Act.

SOURCE & VERIFICATION

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

Identified source rendition: 11 PDF pages; SHA-256

89936b2832e9160d2f968c22bbe673456784ccb47785dccea67060313e408518. Original bytes preserved.

Judicial reasons begin at physical page 3/SCR 944 and end at physical page 11/SCR 952. Editorial headnote pages 1-3 is distinct. No adjacent judgment.

[Open cited source rendition](#)

Physical page 4/SCR 945 first states AY 1962-63 profit of Rs 58,102 and later prints Rs 59,102. The image confirms both figures; no net remaining loss is calculated in this note.; Physical page 4, when recounting the Tribunal, prints that section 75(2) was applicable to AY 1960-61. The Court's own analysis at pages 5-6 identifies the 1961 Act commencing on 1 April 1962 and the disputed AY 1962-63. The inconsistent recital is not used as a statutory-version conclusion.; Physical page 9/SCR 950 prints General Clauses Act, 1987 in its Baliah discussion; the judgment repeatedly and correctly identifies the General Clauses Act, 1897 elsewhere.; The operative reasoning states survival unless displaced expressly or by necessary implication. A shortened express-only sentence at page 10 is not isolated as an absolute rule.; The headnote labels Mangiram Gopi Chand overruled; the judicial text says the High Court was in error in that decision and right in the judgment under appeal. The note rests on that express judicial rejection.; Docket suffix (NT) is visible on physical page 3 though absent from ingestion metadata. Costs are payable to amicus curiae, not simply described as an award to the respondent.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 mapping or present-law certification. Historical statutory language and assessment years are retained.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive later judicial treatment has not been verified. No current-law certification is made.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 11](#)

SHA-256: 89936b2832e9160d2f968c22bbe673456784ccb47785dccea67060313e408518

AI DISCLOSURE

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