

Commissioner of Income-tax, Kanpur v. Behari Lal Ram Charan Ltd.

Civil Appeal No. 74 of 1975

[1987] 2 SCR 1159 | 1987-04-22

Whether a capital loss claimed and identified in an AY 1957-58 assessment could be set off in AY 1965-66 under historical sections 74(1)(b) and 80 despite the absence of a separate strict section 24(3) notification under the 1922 Act.

74(1)(b) (historical transitional capital-loss carry-forward) | 80 (historical loss-return/determination restriction)

Two-judge bench | R.S. Pathak, C.J. | Ranganath Misra, J.

Assessment years: 1965-66

Actually computed old-Act loss; narrow transitional holding

This result turns on the earlier assessment actually identifying/computing the claimed capital loss and on historical section 74(1)(b) read with section 80. It does not dispense with loss determination or validate fictitious losses. The Tribunal's recounted non-computation language differs from the operative High Court finding accepted by the Supreme Court. Four referred questions are background; no separate general merger ruling was made. Costs were awarded without a quantified sum. Later treatment and present-law/2025 mapping remain unverified.

01 FACTS OF THE CASE

For AY 1965-66, corresponding to the previous year ending 31 December 1964, the private limited company returned capital gains of Rs 3,10,200 and claimed set-off of a Rs 3,17,500 capital loss from the sale of shares to three associated concerns in AY 1957-58. The ITO rejected the claim because the earlier loss had been excluded as capital and the earlier first appellate order had called it notional; no further appeal from that earlier order had been filed. The first appellate authority in the disputed assessment also found no genuine loss and relied on the absence of written notification under section 24(3) (physical pages 2-3 / SCR 1160-1161).

The Tribunal allowed the claim. It treated the earlier ITO's rejection as rejection of a revenue-loss claim on the ground that the loss was capital, found no justification for the earlier appellate characterisation as non-genuine, and refused to let the ITO's omission defeat carry-forward. Revenue obtained four referred questions covering merger into the earlier appellate order, whether a loss had been determined, the section 80 restriction and whether section 24(3) applied to capital loss (physical pages 3-4 / SCR 1161-1162).

The Allahabad High Court examined the actual AY 1957-58 assessment computation. It specifically identified the Rs 3,17,500 loss on sale of investments as capital. The Court read the first appellate authority's notional description as meaning an estimate, not a destruction of the capital-loss claim. It upheld the Tribunal, reasoning that a section 139 return could not have been filed before that section existed and, alternatively, that the old-Act return and assessment determination fulfilled the requirement. Revenue's special-leave appeal challenged the High Court's 9 November 1973 judgment in I.T. Reference No. 722 of 1971 (physical pages 2, 4-5 / SCR 1160, 1162-1163).

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

02 DISCUSSION BY THE HON'BLE COURT

Under the historical section 24 provisions, a capital loss could be set off only against capital gains and any qualifying unabsorbed amount carried forward subject to the prescribed limit. Section 24(3) required the ITO to notify the computed loss in writing. The Supreme Court accepted the High Court's finding that the ITO had in fact computed the amount by specifying it in the assessment order. Since the assessee claimed it and the ITO took notice of it, Revenue could not take advantage of the failure to comply strictly with section 24(3), nor use that omission to prejudice the assessee (physical pages 5–6 / SCR 1163–1164).

The Court then expressly turned to the 1961 Act because the set-off was claimed in AY 1965-66. Historical section 74(1)(b) provided for earlier capital losses carried forward under section 24(2B) to be dealt with in AY 1962-63 or a later assessment year under the specified rules. Historical section 80 restricted carry-forward of losses not determined pursuant to a section 139 return. Reading the two provisions together, the Court held that the section 24 benefit continued under the 1961 Act and that section 80's wording did not defeat this claim (physical pages 6–8 / SCR 1164–1166).

The Court disposed of the appeal on that statutory analysis, expressly saying no further reference was needed. It did not announce an independent general doctrine of merger, abolish notification requirements, or hold that every uncomputed or non-genuine claimed loss must be carried forward. The earlier assessment's actual identification of the loss and the transitional section 74(1)(b) were central (physical pages 6 and 8 / SCR 1164, 1166).

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

03 JUDICIAL DECISION

The Court held the set-off admissible and affirmed the High Court's conclusion. Revenue's appeal was dismissed with costs; no sum was fixed. The Supreme Court did not deliver separate fresh answers to each of the four referred questions or order a remand (physical page 8 / SCR 1166).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Revenue appeal dismissed with costs; High Court conclusion allowing the set-off sustained

Final decision on this transitional capital-loss set-off claim for AY 1965-66

Relies on a loss claimed in the old return and actually computed/specified in the earlier assessment; no general dispensation from return, computation or notification requirements.

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

05 AKHB REVIEW POINT

Check the earlier return and the assessment's actual computation before treating absence of a separate loss-notification document as fatal. A label such as capital loss can establish the classification of an amount even though it defeated a revenue deduction. Here the Court relied on the actual identification of that amount, not on an assumption that any figure asserted in a return had automatically become an allowable loss.

Keep the transitional reading of sections 74(1)(b) and 80 tied to old-Act losses. The reported historical text includes different classes and carry-forward periods; this judgment supplies no automatic current-law rule. The four referred questions explain the controversy, but the Supreme Court deliberately chose a narrower statutory route. Do not present it as a freestanding general merger ruling or an endorsement of genuinely fictitious related-party losses. Later treatment and applicable-year legislation must be checked independently.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, author, docket and reference origin

Source url: [Open cited source](#)

Pdf pages: 1; 2

Reporter pinpoint: SCR 1159–1160

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: reported metadata and judicial text

2.

Topic: Figures, earlier proceedings and all four referred questions

Source url: [Open cited source](#)

Pdf pages: 2; 3; 4

Reporter pinpoint: SCR 1160–1162

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

3.

Topic: Earlier computation and High Court reasoning

Source url: [Open cited source](#)

Pdf pages: 4; 5

Reporter pinpoint: SCR 1162–1163

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

4.

Topic: Section 24 and operative finding of computed loss

Source url: [Open cited source](#)

Pdf pages: 5; 6

Reporter pinpoint: SCR 1163–1164

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

5.

Topic: Actual 1961-Act application, transitional section 74 and section 80

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Reporter pinpoint: SCR 1164–1166

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

6.

Topic: Narrow statutory disposal and dismissal with unquantified costs

Source url: [Open cited source](#)

Pdf pages: 8

Reporter pinpoint: SCR 1166

Paragraphs: Unnumbered judicial text unless expressly identified as report metadata

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Ranganath Misra, J.

OTHER STATUTORY CONTEXT

Indian Income-tax Act, 1922, section 24(2A), (2B) and (3): capital-loss set-off/carry-forward and written notification; Sections 74(1)(a) and 74(2), Income-tax Act, 1961: historical classification and temporal provisions quoted as context; Sections 139 and 256(1), Income-tax Act, 1961: return requirement and reference origin

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

ASSESSMENT-YEAR CONTEXT AND LIMITS

AY 1965-66, previous year ending 31 December 1964, is the set-off year under appeal. The claimed capital loss arose in AY 1957-58 under the 1922 Act.

SOURCE & VERIFICATION

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

Identified source rendition: 8 PDF pages; SHA-256

6f55b7e47c4d14702fb5c4179168c372d933a26dc777be6b4dcc88cb67cb1cd4. Original bytes preserved.

Judicial reasons begin at physical page 2/SCR 1160 and end at physical page 8/SCR 1166. Editorial headnote pages 1–2 is distinct. No adjacent judgment.

[Open cited source rendition](#)

The Tribunal's reasoning is recounted as saying the ITO had not computed the loss, but the High Court finding accepted by the Supreme Court at physical page 6 says it was computed by specification in the assessment order. The latter is the operative factual basis, not an uncomputed-loss exception.; The earlier first appellate authority called the loss notional; the High Court construed that as estimated. The Supreme Court did not formulate a general rule that non-genuine or fictitious losses qualify.; Four questions were referred, but the Supreme Court used the combined sections 74(1)(b)/80 analysis to uphold the conclusion without four separately formulated answers.; Physical page 7's quoted section 74(2)(a) prints sub-section (i) of clause (a), within historical statutory text. The note does not treat that internal printed label or the whole quoted compilation as independently certified statutory wording for another assessment year.; Historical section 80 is quoted as referring to a return under section 139. No later amendment, filing deadline relaxation or present/2025 correspondence is inferred.; Costs were awarded without a stated amount. No numerical balance of unused loss or final recomputation was ordered by the Supreme Court.

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: 8](#)

SHA-256: 6f55b7e47c4d14702fb5c4179168c372d933a26dc777be6b4dcc88cb67cb1cd4

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