

Shubhlaxmi Mills Limited v. Additional Commissioner of Income-Tax, Gujarat

Civil Appeal No. 47(NT) of 1975

[1989] 2 SCR 86 | 1989-03-28

Under the section 33/34 text considered in 1989, could development rebate be determined and carried forward without the reserve being created in the installation or first-use previous year, on the basis that an adequate reserve would be created when profits later became available?

33(1) | 33(2) | 34(3)(a)

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

Assessment years: 1962-63

Historical reserve-timing ruling: retrospective amendment verified

The Court in 1989 required the reserve entries in the installation/first-use previous year despite nil or insufficient profits. Finance Act, 1990 section 11 subsequently replaced the timing words and omitted the supporting Explanation, both retrospectively from 1 April 1962. The strict timing statement must therefore not be published as an unqualified later rule. The statutory amendment is verified; comprehensive later judicial treatment, present-law applicability and 2025 mapping remain unverified.

[Specified statutory source and temporal limits](#)

01 FACTS OF THE CASE

The company operated a textile mill at Cambay, Gujarat. For AY 1962-63, with calendar year 1961 as the previous year, it claimed Rs.1,26,233 as development rebate under section 33. The Income-tax Officer rejected the claim because the company had not created the reserve required by section 34(3), and the Appellate Assistant Commissioner agreed (physical page 3 / SCR 88D-E).

The Tribunal favoured the company. The referred questions concerned its entitlement to carry the rebate forward and the direction to determine the rebate for later set-off when profits were available, provided the company then satisfied requirements including an adequate reserve. The Gujarat High Court answered both questions for the Revenue. The company's Supreme Court appeal maintained that the reserve need not be created in the previous year in which the machinery or plant was installed (physical page 3 / SCR 88A-G).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court read section 33(1)'s allowance as subject to section 34. The section 34(3)(a) text before it required 75 per cent of the rebate to be actually allowed to be debited to the relevant previous year's profit and loss account and credited to a reserve. That reserve was to be used for the undertaking's business over the following eight years, excluding distribution of dividends or profits, remittance abroad as profits and creation of assets abroad (physical pages 3–4 / SCR 88H–89C).

Central to the reasoning was the Explanation inserted by the Finance Act, 1966 with retrospective effect from the Act's commencement. As described by the Court, deduction could not be denied merely because the reserve debit exceeded the year's book profit. The Court read this as requiring reserve creation despite nil or insufficient profits. Book entries sufficed; the relevant debit and reserve credit had to be made before finalisation of the profit and loss account (physical page 4 / SCR 89C–F).

The Court distinguished 1922-Act decisions lacking that Explanation and the different banking-reserve issue in Indian Overseas Bank. It disagreed with the Allahabad High Court's views in Vishnu Industrial Enterprises and U.P. Hotel and Restaurants. It also considered the Indian Oil arguments based on the difference between rebate to be allowed and actually allowed, the income limitation and eight-year carry-forward. Those arguments did not displace the installation/first-use-year requirement as the Court understood the then text. The referenced CBDT circulars did not, in its view, change that legal position (physical pages 4–6 / SCR 89G–91F).

This account describes the 1989 judicial reasoning. Section 11 of the Finance Act, 1990 subsequently altered the precise timing wording and removed the Explanation retrospectively; that separately verified legislative change belongs to the qualification below, not to the Court's original discussion.

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

03 JUDICIAL DECISION

Under the provisions it considered, the Court held that the debit and reserve credit had to be made in the previous year of installation or first use, notwithstanding want or insufficiency of profits. It affirmed the High Court's answers in favour of the Revenue and dismissed the company's appeal without an order as to costs (physical page 6 / SCR 91C–H).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Assessee's appeal dismissed; High Court answers sustained; no order as to costs

Final reasoned historical determination of reserve timing and carry-forward entitlement

The 1989 interpretation must be read with the subsequently enacted retrospective change to section 34(3)(a); it is not an unqualified statement of later reserve-timing law.

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

05 AKHB REVIEW POINT

Distinguish the rebate calculation, the limit on deduction against income, carry-forward and the reserve condition. In the judgment's analysis, an absence of profits did not excuse the required contemporaneous entries. Nor did its statement that book entries could create the reserve erase the statutory business-use restrictions.

The later statutory qualification is essential. The Income Tax Department's published text of Finance Act, 1990 section 11(i) replaces the reference to the relevant previous year with a window covering a previous year in which deduction is allowed under section 33(2), or an earlier year no earlier than the prescribed acquisition, installation or first-use year. Section 11(ii) removes the Explanation on which the Court relied. Both changes are expressly deemed effective from 1 April 1962. This verified amendment changes the statutory basis for repeating the judgment's strict timing proposition; the note does not describe it as a later judicial overruling.

A particular claim still requires the amended text, relevant years, entries and procedural position to be checked. The bounded amendment check does not establish entitlement in every loss year, authorise reopening a concluded assessment, or certify present law. Comprehensive later judicial treatment and 2025 mapping remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, bench and appeal number

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: Cover and SCR 87F–H

Source role: reported metadata

2.

Topic: AY 1962-63, claim and referred carry-forward questions

Source url: [Open cited source](#)

Pdf pages: 3

Paragraphs: SCR 88A–G

Source role: judicial text

3.

Topic: Historical reserve requirement and Finance Act, 1966 Explanation

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: SCR 89A–F

Source role: judicial text

4.

Topic: Cited decisions and circulars; competing carry-forward arguments

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 89G–91C

Source role: judicial text

5.

Topic: Court's timing conclusion, reference answers and no-costs dismissal

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: SCR 91C–H

Source role: judicial text

6.

Topic: Later retrospective substitution and omission: essential statutory qualification

Source url: [Open cited source](#)

Pdf pages:

Paragraphs: Finance Act, 1990, section 11(i)–(ii), complete provision

Source role: official amending act text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.S. Pathak, C.J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 6 PDF pages; SHA-256

dd1a6fd6dcc0c2d62d5911e8c61f0647e0b88d3ed127408972d4339e03957998. Original bytes preserved.

Complete unnumbered judicial text on physical pages 3–6 (SCR 88–91). Editorial headnotes, cited-authority list and appeal metadata on physical pages 1–2 separately identified; no adjacent judgment.

Open cited source rendition

The source title is Shubhlaxmi Mills Limited; the note follows the inspected report and does not add an unverified parallel citation.; The body expressly identifies AY 1962-63 and calendar year 1961. The issue is not merely whether a reserve exists eventually, but whether carry-forward can proceed before the historical timing condition is met.; The Court's reasoning relies on the Finance Act, 1966 Explanation. Its later omission and the substitution of the timing words must be displayed beside the holding, not buried as an optional note.; Nil or insufficient profits are addressed as a statutory interpretation question; the note does not invent the company's precise book-loss amount.; Arguments and holdings of Indian Oil and other cited decisions are distinguished from the Supreme Court's own conclusion.; Only section 11(i)-(ii) of the Finance Act, 1990 has been separately verified on the official Income Tax Department site. The full amending Act, subsequent judicial treatment and current statutory position have not been comprehensively audited.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment search is certified. The only separately verified post-judgment legislation in this batch is expressly identified in the Shubhlaxmi note.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 6](#)

SHA-256: dd1a6fd6dcc0c2d62d5911e8c61f0647e0b88d3ed127408972d4339e03957998

[official hosted amending act text](#)

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