

Garden Silk Weaving Factory, Surat v. Commissioner of Income Tax, Gujarat, Ahmedabad

Civil Appeal Nos. 1249 of 1975 and 2075 of 1979

[1991] 1 SCR 909 | 1991-03-22

Under the historical registered-firm scheme, who carries forward depreciation left unabsorbed after the firm and its partners have used the available same-year set-offs, and is ordinary business loss treated in the same way?

32(2), historical registered-firm text | 72(2) | 75, historical registered-firm loss rule | 67 | 70 | 71 | 182

Two-judge bench | S. Ranganathan, J. | K. Ramaswamy, J.

Assessment years: 1967-68, 1968-69

Historical registered-firm scheme; depreciation relief only

The firm carries forward only depreciation remaining after permitted firm- and partner-level absorption; no amount may be allowed twice. Ordinary business-loss carry-forward by this registered firm remained barred, and the appeals succeeded only to the stated extent. AY 1966-67 depreciation was conditional. Reported income/loss figures and some statutory references contain discrepancies; no final tax amount is supplied. The historical registered-firm scheme, set-off breadth and carry-forward duration are not certified as current law. Comprehensive later treatment and 2025 mapping remain unverified.

01 FACTS OF THE CASE

The registered firm appealed in relation to AYs 1967-68 and 1968-69. For AY 1968-69 it deducted three carried amounts from the preceding year: unabsorbed depreciation of Rs.1,59,181, development rebate of Rs.2,79,150 and business loss of Rs.3,49,242. The ITO accepted the development-rebate carry-forward but added back the other two items, totalling Rs.5,08,423. The AAC agreed; the Tribunal allowed the depreciation claim but rejected ordinary loss carry-forward. The Gujarat High Court answered both reference questions against the firm (physical pages 7–8).

For AY 1967-68, the Court had no full paper book. It recorded an original returned loss of Rs.7,87,515, a revised loss of Rs.5,46,351 and an assessed loss of Rs.4,85,250. It expressly noticed the mismatch with the figures and components appearing in the AY 1968-69 account, but regarded that as immaterial to the legal principle. The firm's request to carry the loss forward had failed below (physical pages 8–9). These historical figures are not a final Supreme Court recomputation.

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

02 DISCUSSION BY THE HON'BLE COURT

The Court separated three stages: computation and adjustment between sources under a head; set-off between heads; and carry-forward of the residue. Excess depreciation is a component of business loss for the first two stages. Depreciation attributable to one business must first absorb that business's profit, then other business income and then other taxable income, under the historical provisions under consideration. It cannot be carried forward prematurely while same-year income remains available to absorb it (physical pages 9–11 and 17–20).

For carry-forward, however, the statute deliberately treats ordinary loss and unabsorbed depreciation differently. Under the registered-firm rule in section 75, ordinary loss not absorbed by the firm was apportioned to the partners, who alone could carry it forward; the correctness of the adverse ordinary-loss answer was not challenged before the Supreme Court. Section 32(2) supplied a separate depreciation mechanism. The Court contrasted the historical eight-year ordinary-loss limit with the indefinite depreciation carry-forward then available, and explained section 72(2)'s priority for carried business loss over carried depreciation. Development rebate stood separately and was not a constituent of the loss figure (physical pages 12–16 and 23).

Reading sections 32(2), 67 and 182 together, the Court rejected both exclusive retention of depreciation by the firm without partner apportionment and exclusive carry-forward by each partner. Its sequence was: (i) exhaust adjustment against the firm's other income; (ii) apportion the remaining depreciation and adjust each partner's share against that partner's business and other income in the same assessment year; (iii) carry the still-unabsorbed balance forward in the firm's assessment. In later years it joins, or is deemed to be, that firm's depreciation allowance, and the statutory process continues (physical pages 21–26).

The 1953 amendment to the predecessor depreciation proviso was read as preventing repetition of relief already effectively given to partners, not as extinguishing the firm's ability to carry the unused balance. Firm and partner assessments are interdependent for these purposes. The same depreciation cannot benefit the firm after it has benefited a partner, or vice versa. Possible differences in relief between partners with different incomes did not displace the statutory construction (physical pages 27–28).

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

03 JUDICIAL DECISION

The firm was entitled to carry forward its unabsorbed depreciation computed for AY 1967-68 for set-off in AY 1968-69, through the sequence explained by the Court; it could not carry forward ordinary business loss. For AY 1967-68, any unabsorbed depreciation from AY 1966-67 could similarly be brought forward if it existed, while the ordinary-loss prohibition remained. Both appeals were allowed only to that extent, with directions to modify the assessments appropriately and no order as to costs (physical page 29).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on residual depreciation carry-forward; Revenue position on ordinary business-loss carry-forward preserved

Both appeals allowed to the indicated extent; assessments to be modified appropriately; no costs

Final interpretation of historical firm/partner carry-forward provisions; resulting numerical assessments not fixed by the Court

No double allowance; AY 1966-67 depreciation is conditional, not an established amount; development rebate had already been allowed and was not the contested relief.

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

05 AKHB REVIEW POINT

Reconstruct a year-by-year reconciliation before relying on this historical decision: identify the allowance's character, the firm's same-year absorption, every partner's actual absorption, and the genuine unused balance. A book allocation to a partner is not the same as effective allowance against that partner's income. Keep ordinary business loss and development rebate on separate schedules and observe the historical priority between carried business loss and carried depreciation.

The qualified disposition is essential: the Court did not allow the firm's ordinary loss, certify all the reported figures, or find depreciation from AY 1966-67 as a fact. Its explanation of indefinite carry-forward and cross-head adjustment belongs to the provisions it construed. Establish the governing year and applicable statutory restrictions afresh before using the reasoning in a later computation; no modern firm-taxation result or 2025 Act mapping is asserted.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, bench, date and both appeal numbers

Source url: [Open cited source](#)

Pdf pages: 1; 6

Scr pages: 909; 914-G-H

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: reported metadata

2.

Topic: Facts, actual assessment years and numerical-record limitations

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Scr pages: 915-B-917-D

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

3.

Topic: Ordinary-loss prohibition, unchallenged adverse answer and special depreciation text

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16

Scr pages: 920-B-924-D

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

4.

Topic: Same-year absorption must precede depreciation carry-forward

Source url: [Open cited source](#)

Pdf pages: 17; 18; 19; 20

Scr pages: 925-F-928-G

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

5.

Topic: Firm/partner scheme, dissection of loss and carried-loss priority

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23; 24

Scr pages: 929-A-932-B

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

6.

Topic: Residual depreciation belongs in firm's carry-forward; three-step sequence

Source url: [Open cited source](#)

Pdf pages: 24; 25; 26

Scr pages: 932-C-934-H

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

7.

Topic: 1953 amendment and prohibition of duplicated relief

Source url: [Open cited source](#)

Pdf pages: 27; 28

Scr pages: 935-A-936-H

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

8.

Topic: Qualified disposition; conditional AY 1966-67 amount; no costs

Source url: [Open cited source](#)

Pdf pages: 29

Scr pages: 937-A–C

Paragraphs: Unnumbered judicial text; physical PDF pages are one-based

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

33(2), development-rebate distinction; 35(4), mentioned by analogy and left outside the material controversy; 76 and 77, historical firm-loss scheme; 141, provisional-assessment background

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S. Ranganathan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

ASSESSMENT-YEAR SCOPE AND LIMITS OF THE OPERATIVE DIRECTION

These are the two appealed assessment years. AY 1966-67 appears only as the possible source year of depreciation deductible in AY 1967-68; the Court did not find that such depreciation necessarily existed. The judicial text calls the relevant previous years Saka years 2022 and 2023; that calendar label has not been independently reconciled.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 29 PDF pages; SHA-256

183274fb8f0659d570a150b6a4f1944a35e2c253fa7729e8814e6fee177ae540. Original bytes preserved.

Complete unnumbered judicial text from physical page 7/SCR 915-A (Ranganathan J. opening) through physical page 29/SCR 937-C (qualified allowance and no costs). Editorial headnote on physical pages 1–6 and appearances separated. No neighbouring judgment.

Open cited source rendition

Physical page 7/SCR 915 prints returned income first as Rs.3,96,483 but later as Rs.3,94,483; the stated income less the three deductions yields the latter figure. The source inconsistency is retained rather than silently turned into a Court-approved final computation.; Physical pages 8–9/SCR 916–917 expressly record missing complete papers for AY 1967-68 and differing loss figures. The direction on AY 1966-67 depreciation is conditional.; Physical page 13/SCR 921 says the adverse ordinary-loss answer was not challenged; the appeals' allowance on page 29 is expressly limited. The reporter's abbreviated Appeals allowed label is not the complete outcome.; The predecessor depreciation provision is quoted as section 10(2)(vi), proviso (b), on physical page 14; the headnote and the historical-amendment reference on page 27 instead print 10(2)(vib). That typography is not used to confuse depreciation with the separately discussed development-rebate provision.; Physical page 25 attributes partner loss treatment to section 67(3), while the statutory extract on page 22 identifies subsection (3) as interest on borrowed investment capital and subsection (4) as partner loss. The note relies on the reproduced scheme and explicit sequence, without silently authenticating that subsection reference.; The Court's general historical set-off illustrations and duration statements are not current-year compliance advice. Comprehensive later legislative and judicial treatment has not been verified.

The decision applies the historical registered-firm/partner assessment scheme to AYs 1967-68 and 1968-69. Its section 32(2) text expressly refers to registered firms and partners; its section 75 bars the firm from carrying ordinary losses. The Court notes that some provisions reproduced as then current contain amended references. This note does not certify their verbatim enactment text for every intervening year or treat that scheme as present law.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year; historical provisions reproduced in the judgment are not a fresh reconstruction of every intervening amendment.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment has not been verified. Any actually read bounded later judgment is expressly identified. No citator status or current-law certification is supplied.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 29](#)

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