

Commissioner of Income Tax, Orissa Etc. Etc. v. N.C. Budharaja & Company and Another Etc. Etc.

Civil Appeal Nos. 4238–4240 of 1983 and connected proceedings (full list below)

[1993] Supp.2 SCR 185 | 1993-09-07

Did constructing a dam, or casting pressure-pile foundations in situ, meet the historical requirement of manufacturing or producing articles under sections 80HH and 84; and did machinery for dam/canal construction qualify under the additional construction/article-or-thing wording in section 32A(2)(b)(iii), without deciding industrial-undertaking status?

80HH(1), 80HH(2)(i) and 80HH(4), historical provision | 84(1) and 84(2)(iii), historical provision | 101, mentioned in the Pressure Piling reference for AY 1964-65; no independent construction | 32A(1) and 32A(2)(b)(iii), historical investment-allowance provision | 256(1) and 256(2), reference proceedings

Two-judge bench | B.P. Jeevan Reddy, J. | N. Venkatachala, J.

Assessment years: 1974-75 and 1975-76: representative Budharaja section 80HH appeals, 1963-64 and 1964-65: Pressure Piling section 84 appeals, Years for Shankar Construction, bore-well machinery and other connected appeals are not specified in the bounded report

Historical activity test; industrial status and appeal exceptions

This decision excludes the specified dam/canal construction and in-situ piling from the historical qualifying-activity requirements; it expressly leaves industrial-undertaking status and a separate manufactured-component claim open. The printed section 80HH text identifies a later 1990 insertion. Only the lead dam and piling assessment years are stated; the caption does not expressly map C.A. 4882/1993 to the bore-well SLP. C.A. 5381/1992 and SLP 16838/1992 were delinked, not decided. The 1994 Builders Associations check is bounded; comprehensive later treatment, current law and 2025 mapping remain unverified.

01 FACTS OF THE CASE

The representative section 80HH appeals, Civil Appeal Nos. 4238–4240/1983, concerned AYs 1974-75 and 1975-76. N.C. Budharaja & Company was constituted by a partnership deed of 14 January 1972 for a dam contract in Dhenkanal district, Orissa, a notified backward area. The ITO allowed relief; the Commissioner revised that allowance because dam construction was not manufacture or production of an article. The Tribunal restored relief, regarding the work as industrial activity and treating the dam as an article; the Orissa High Court agreed in a section 256(2) reference (physical pages 5–7 / SCR 189–191).

The separate Pressure Piling appeals, Nos. 5865–5866/1983, concerned AYs 1963-64 and 1964-65. The assessee laid foundations using a patented pressure-piling technique. Steel casings were bored into the ground, soil removed, concrete introduced under compressed air and the casing withdrawn, leaving permanent concrete piles in the earth. The ITO and AAC denied section 84 relief; after a Tribunal-member difference, the third member supported allowance, and the Bombay High Court answered the reference for the assessee. The reference also mentioned section 101 for AY 1964-65 (physical pages 12–15 / SCR 196–199).

The second statutory group, Civil Appeal Nos. 4239–4248/1992, involved Shankar Construction Company. It manufactured and sold tiles as well as undertaking large dam and canal works, but the disputed investment allowance was specifically for machinery and plant used in the dam/canal construction business. The Assessing Officer denied the claim, CIT(A) allowed it, the Tribunal restored disallowance and the Karnataka High Court answered the reference for the assessee. The report does not state the assessment years for this group. The final page also deals separately with bore-well machinery in SLP No. 16839/1992 and identifies other connected appeals, while expressly delinking two proceedings (physical pages 16–17 and 22 / SCR 200–201 and 206).

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

02 DISCUSSION BY THE HON'BLE COURT

For section 80HH, every stipulated condition had to be met. Revenue had not argued against industrial-undertaking status, so the Court assumed that status for the case and expressly left the question open. Commencement after 31 December 1970 and location in a backward area were not disputed. The issue actually decided was whether the dam was an article manufactured or produced. The report reproduces section 80HH with a later 1990 closing-date insertion and identifies that amendment; the reproduced text is not a claim that the later insertion governed these earlier assessment years (physical pages 7–9 / SCR 191–193).

Production has a wider reach than manufacture: manufacture requires a commercially new and distinct commodity, while production can include new goods brought into existence by other processes and relevant intermediate, residual and by-products. That distinction did not make a dam an article. Read in ordinary commercial usage and in its statutory context, a dam, bridge, road, building or similar civil construction was outside the manufacture/production-of-articles requirement. Liberal interpretation could not replace the enacted words. The claimant sought relief on the dam as a whole; the Court expressly reserved whether a separately framed claim on articles manufactured by the assessee and consumed in the dam might qualify (physical pages 9–12 / SCR 193–196).

The same relevant language appeared in section 84(2)(iii). The pressure piles were formed on site, became fixtures in the earth and were integral to the eventual larger structure. The Court distinguished that precise operation from supplying prefabricated piles for someone else to install. A technologically improved method of laying a foundation did not turn this in-situ works contract into manufacture or production of an article (physical pages 13–16 / SCR 197–200).

For section 32A(2)(b)(iii), the additional words construction and thing did not independently extend investment allowance to dams and canals. The Court traced the 1977 amendment, effective 1 April 1978: the earlier provision's Ninth Schedule covered movable articles/things, including ships; the later clause extended coverage subject to Eleventh Schedule exclusions and continued to cover ships. The retained construction wording had a role in relation to ships. In this context, articles and things were used interchangeably and could not be detached from the scheme to include the civil constructions in issue. Industrial-undertaking status alone did not satisfy the separate qualifying-business requirement. Again, the Court expressly did not decide that status (physical pages 16–22 / SCR 200–206).

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

03 JUDICIAL DECISION

The Court allowed Civil Appeal Nos. 4238–4240/1983, 5865–5866/1983 and 4881/1993 (granting leave in SLP No. 3219/1993), with no costs. It also allowed Civil Appeal Nos. 4239–4248/1992 (Shankar Construction), 3859/1992 (Mysore Construction), 3405/1991 (Suresh Malpani & Co.) and 2685/1992 (Buildment Pvt. Ltd.), again with no costs. In the separate bore-well paragraph, it granted leave in SLP No. 16839/1992 and allowed the appeal. The caption lists C.A. 4882/1993, but the final page does not expressly state its correspondence to that SLP; no such mapping is invented here (physical pages 5 and 22 / SCR 189 and 206).

C.A. 5381/1992 and SLP (Civil) 16838/1992 were delinked and directed to be posted separately after four weeks. They were not disposed of on these merits (physical page 22 / SCR 206).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue in the appeals actually allowed; the two delinked proceedings remain outside the merits disposition

Specified Revenue appeals allowed; leave granted and bore-well appeal allowed; no-costs orders as stated for the enumerated civil-appeal groups; C.A. 5381/1992 and SLP (C) 16838/1992 delinked

Reasoned final resolution of historical qualifying-activity requirements in the disposed appeals, with express reservations and delinking

No determination that all construction enterprises fail industrial-undertaking status. No rejection of a separate manufactured-component claim, prefabricated-pile activity or the tile-manufacturing business. No assessment years invented for connected matters. Delinked cases are not treated as decided.

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

05 AKHB REVIEW POINT

Identify both the exact statutory benefit and the exact revenue-producing activity. A finding that the business is an industrial undertaking does not answer whether the relevant output is a qualifying article or thing; conversely, this decision did not negate industrial-undertaking status. Separate on-site immovable construction from any independently manufactured movable output and connect the deduction actually claimed to that output. The reservation on self-manufactured components is an open question in this judgment, not an affirmative allowance.

A bounded later primary-source check is available in Builders Associations of India v. Union of India and Others, decided on 1 August 1994. The Court dismissed W.P.(C) 430/1994 at admission with detailed reasons and refused to reconsider Budharaja's section 32A(2)(b)(iii) interpretation. It rejected attempts to detach construction from the remaining statutory words, used section 32A(2A) as supporting context, distinguished the different section 32AB circular scheme and explained that the disputed phrase had not really been in issue in Bhageeratha Engineering. The complete fourteen-page report was read; this observation relies on physical pages 4 and 8–14 / SCR 379 and 383–389. It does not certify exhaustive later treatment or make a general ruling on every CBDT circular.

Maintain an appeal-level disposition list. The first page's broad report summary does not override the actual order delinking C.A. 5381/1992 and SLP 16838/1992, nor supply missing assessment years or a missing appeal/SLP crosswalk.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal Nos. 4238–4240 of 1983 / Civil Appeal Nos. 5865–5866 of 1983 (Pressure Piling) / Civil Appeal Nos. 4239–4248 of 1992 (Shankar Construction) / Civil Appeal No. 3859 of 1992 (Mysore Construction) / Civil Appeal No. 3405 of 1991 (Suresh Malpani & Co.) / Civil Appeal No. 2685 of 1992 (Buildment Pvt. Ltd.) / Civil Appeal No. 4881 of 1993, arising from SLP No. 3219 of 1993 / SLP No. 16839 of 1992 (bore-well machinery; leave granted and appeal allowed) / Civil Appeal No. 4882 of 1993 (caption; appeal-to-SLP correspondence not expressly stated) / Civil Appeal No. 5381 of 1992 (delinked, not decided) / SLP (Civil) No. 16838 of 1992 (delinked, not decided)

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, author, caption and representative assessment years

Source url: [Open cited source](#)

Pdf pages: 1; 5

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: reported metadata and judicial text

2.

Topic: Budharaja partnership, dam contract and procedural path

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

3.

Topic: Historical section 80HH text, later insertion and industrial-status reservation

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

4.

Topic: Production versus manufacture, civil construction and component reservation

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

5.

Topic: Pressure Piling assessment years, section 101 reference, method and in-situ holding

Source url: [Open cited source](#)

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

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

6.

Topic: Shankar machinery claim and section 32A requirements

Source url: [Open cited source](#)

Pdf pages: 16; 17; 18

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

7.

Topic: Section 32A legislative history and preserved industrial-status question

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21; 22

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

8.

Topic: Allowed appeals, separate bore-well disposition and two delinked proceedings

Source url: [Open cited source](#)

Pdf pages: 22

Paragraphs: Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.

Source role: judicial text

9.

Topic: Bounded later refusal to reconsider Budharaja's historical section 32A construction**Source url:** [Open cited source](#)**Pdf pages:** 4; 8; 9; 10; 11; 12; 13; 14**Paragraphs:** Exact physical PDF pages; printed SCR pages are supplied in the note. Judicial paragraphs are unnumbered.**Source role:** bounded later judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B.P. Jeevan Reddy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 22 PDF pages; SHA-256

1023329ff16b670e9f72c1740edf48607ce63e08a3a04dcec7e3f1697261f82f. Original bytes preserved.

Complete judicial text physical pages 5–22 / SCR 189–206; editorial headnote physical pages 1–5 separated. Both statutory groups, Pressure Piling, separate bore-well disposition, all expressly allowed appeals and both delinked proceedings checked. Caption C.A. 4882/1993 is not silently mapped to the separately identified bore-well SLP.

[Open cited source rendition](#)

Industrial-undertaking status is expressly left open at physical pages 9, 17 and 22; the assumed status must not be converted into either approval or rejection.; The manufactured-component claim is expressly reserved on physical page 11; Pressure Piling concerns in-situ fixtures and distinguishes prefabricated supplies on page 15. Shankar's separate tile business is not the disputed machinery use.; The section 80HH quotation includes the Finance Act 1990 insertion but expressly identifies it as later; no retrospective statutory substitution is made for AYs 1974-75/1975-76.; Only the Budharaja and Pressure Piling assessment years are stated. No years are inferred for Shankar Construction or the other connected matters.; Section 101 occurs in the Pressure Piling reference, without a separate interpretive ruling. Revision is narrated without citing section 263.; The caption includes C.A. 4882/1993; the separate bore-well ending names SLP 16839/1992. Their correspondence is not explicitly printed. C.A. 4881/1993 is expressly linked to SLP 3219/1993.; C.A. 5381/1992 and SLP (C) 16838/1992 were delinked and posted separately, not allowed. The distinct 16839/1992 bore-well SLP was allowed after leave.; Only the identified 1994 Builders Associations order is independently checked as later treatment. Comprehensive later treatment, present law and 2025 mapping remain unverified.

The operative merits are manufacture/production of articles under historical sections 80HH and 84, and the construction/manufacture/production requirement of section 32A(2)(b)(iii). Industrial-undertaking status was expressly not decided. Section 101 appears in the Pressure Piling reference, not a separate analysis. The Commissioner's revision is described without an expressly cited section 263, so section 263 is not independently tagged. Section 33B is a quoted cross-reference, while section 32AB and section 119 belong to the separately bounded 1994 order, not the 1993 holding.

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. Comprehensive subsequent treatment remains unverified. Only the independently read 1 August 1994 Builders Associations reasoned order is used as a bounded later check of the historical section 32A interpretation; no present-law or 2025 conclusion is asserted.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 22](#)

SHA-256: 1023329ff16b670e9f72c1740edf48607ce63e08a3a04dcec7e3f1697261f82f

[bounded later judgment - PDF pages: 14](#)

SHA-256: ce947efbaa56ca6d3fa5dca8e31a4acd23c1f292b82e0f65b119e47dee320773

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