

Burmah Shell Oil Storage and Distributing Company of India Ltd. (now Bharat Petroleum Corporation Ltd.) v. Commissioner of Income Tax (Central), Calcutta

Civil Appeal No. 1325 of 1979

[1994] 3 SCR 374 | 1994-04-06

Whether usable cylinders sold to the refinery generated the claimed revenue deduction or terminal allowance, and whether old excess reserves automatically cured the current development-rebate reserve shortfall.

32(1)(iii), historical terminal allowance | 33 | 34(3)(a) | 261

2-judge bench | M.N. Venkatachaliah, C.J. | G.N. Ray, J.

Assessment years: 1962-63

Distinct historical deduction conditions; source figures vary

Usable cylinders were not actually used up merely because sold. The alternative terminal allowance also lacked the needed record and write-off, while prior excess reserves did not automatically cure the current shortfall. The source has amount and wording discrepancies. These old depreciation/rebate provisions require year-specific checking; comprehensive later treatment remains unverified.

01 FACTS OF THE CASE

The LPG distributor acquired cylinders between 1955 and 1961 at a stated cost of Rs 1,09,63,754, treated them as capital assets and claimed no depreciation through AY 1961-62. It sold them in 1961 to the refinery for Rs 82,19,947 and claimed the Rs 27,43,807 shortfall for AY 1962-63. The cylinders continued to carry the refinery's gas for distribution through the same assessee. The ITO and AAC rejected the deduction; the Tribunal allowed it as loss on returnable packages (physical pages 4-5 and 9-10).

A separate question concerned development rebate of Rs 24,15,622 despite a Rs 34,827 reserve shortfall. The assessee sought to rely on excess reserves from earlier years without making the relevant-year debit and credit transfers. The High Court answered both questions against it and granted a certificate for this appeal (physical pages 5-8).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court approved the High Court's distinction between disposing of packages and their being actually used up. The historical entry addressed packages exhausted by use or rendered unserviceable, not merely an asset no longer owned by the original user. Because the same cylinders continued in use after sale, they did not meet that condition. Revenue also emphasised that the entry addressed cost, not loss; the Court's express conclusion was that these cylinders were not actually used up (physical pages 9–11).

On the alternative historical section 32(1)(iii) claim, the record lacked a Tribunal finding of written-down value. Even assuming the claimed value and the provision's applicability, the company had not written off the deficiency in its books. That independently prevented the claim. The Court did not determine a hypothetical WDV from original cost merely because depreciation had not previously been claimed (physical pages 8 and 10–11).

For development rebate, earlier excess reserves were not automatically a compliant reserve for the present year. The approved reasoning recognised that the company could release an excess and make the required profit-and-loss debit and reserve credit, but it had not done so. The requisite entries were substantive conditions, subject to applicable Board relaxation, not empty formalities. No such compliance or applicable relaxation was established here (physical pages 8–9 and 11).

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

03 JUDICIAL DECISION

The assessee's appeal was dismissed with no order as to costs. The High Court's rejection of the returnable-package deduction, alternative terminal allowance and development-rebate claim stood. No fresh calculation or remand was directed (physical pages 10–11).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Assessee appeal dismissed; no costs

Final historical deduction and reserve-compliance ruling

No universal denial for every sale of a depreciable asset, no adjudicated WDV figure, and no assertion that excess reserves can never be properly reappropriated.

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

05 AKHB REVIEW POINT

Test each claimed route separately. A sale loss, a package cost allowance and a terminal depreciation allowance have distinct requirements; an asset's leaving the taxpayer's ownership is not the same as physical exhaustion under the old package entry. For a reference case, necessary valuation findings must exist in the Tribunal record, and a statutory write-off condition cannot be supplied by a later argument alone.

Reconcile the development-rebate reserve for the particular year, including authorised release and actual accounting transfers of prior excess. This decision did not declare old excess permanently unusable; it denied automatic set-off without the required entries. The checked historical compilation also records the general discontinuance of development rebate for post 31 May 1974 acquisitions/installations, subject to identified transitional exceptions. That reinforces the need to use the precise historical version rather than offer this as a present incentive. Comprehensive later treatment, subsequent depreciation regimes and 2025 correspondence are unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, AY and principal facts

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4; 5

Paragraphs: Unnumbered judicial text

Source role: report metadata and judicial text

2.

Topic: Reference questions and distinct reserve amounts

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Alternative allowance, WDV and write-off conditions

Source url: [Open cited source](#)

Pdf pages: 8; 10; 11

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Reserve entries and actual-use test

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Final dismissal and costs

Source url: [Open cited source](#)

Pdf pages: 11

Paragraphs: Unnumbered judicial text

Source role: judicial text

6.

Topic: Historical rebate discontinuance and exceptions

Source url: [Open cited source](#)

Pdf pages: 231

Paragraphs: Section 33(5), footnote 96

Source role: bounded historical statutory text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

G.N. Ray, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER PROVISIONS AND THEIR DISTINCT SCOPE

Income-tax Rules 1962, Rule 5 and historical Appendix I mineral-oil returnable-package entry

SOURCE & VERIFICATION

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

Identified source rendition: 11 PDF pages; SHA-256

f21deb0b8f7e65c0c8907422f0fed0c6c755d7da62c649aad963a59a7c390f27. Original bytes preserved.

Complete judicial text physical pages 4–11 / SCR 377–384; prior editorial synopsis and counsel submissions distinguished; no adjoining judgment.

[Open cited source rendition](#)

The main facts give cost Rs 1,09,63,754 and sale Rs 82,19,947, yielding Rs 27,43,807. Counsel's narrative on page 8 instead prints cost Rs 1,09,63,745 and sale Rs 82,19,847; the editorial page 2 also has a Rs 27,43,809 variant. These are retained as source discrepancies, not new computations.; The reframed High Court question on page 6 calls Rs 27,43,807 the sum realised on sale, although the main facts describe it as the loss. The note follows the repeated main factual characterisation.; Page 10 awkwardly says the cylinders were "actually used up in the trade" before concluding they were not actually used up. The surrounding facts and repeated reasoning refer to continued use, not exhaustion.; The initial ITO rationale about prior depreciation and Revenue's claim that the special entry excludes section 32(1)(iii) should not be enlarged into an independent universal Supreme Court holding. The adopted record and write-off obstacles suffice on this case.; The old schedule entry is variously printed with (a)/(d) and (1)/(i). The note identifies the returnable-package mineral-oil entry without inventing a corrected modern schedule citation.; The shortfall is Rs 34,827 in the High Court question, while Rs 24,15,622 is the claimed development rebate. Neither is the cylinder-sale loss.

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. Any actually checked later judgment or statute is expressly identified in this note.

IDENTIFIED SOURCE LINKS

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

SHA-256: f21deb0b8f7e65c0c8907422f0fed0c6c755d7da62c649aad963a59a7c390f27

[official department hosted historical statutory compilation - PDF pages: 1251](#)

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