

Commissioner of Income Tax, Madras & Another v. M/s. Dalmia Cement

Civil Appeal Nos. 745-746 of 1976

[1995] Supp. 2 SCR 708 | 1995-08-16

Historical loss-return procedure: refusal to assess late loss returns was appealable and could not be reopened through later-year assessment proceedings.

Indian Income-tax Act, 1922: sections 22(1), 22(2A), 23(3), 24(1), 24(2), 24(3) and 30 | Income-tax Act, 1961: sections 80, 139(2), 139(3), 143(3), 157 and 246, discussed by comparison

3-judge bench | B. P. Jeevan Reddy, J. | Suhas C. Sen, J. | G. T. Nanavati, J.

Refusal versus omitted intimation

The decisive distinction was between an appealable refusal to assess a loss return and a failure, after assessment, to issue the separate written loss intimation required by section 24(3).

Other questions remained undisturbed

The High Court's conclusions on Questions 2 and 4, including sameness of business, were not questioned before the Supreme Court. The operative reversal addressed Question 3.

Historical procedure

The Court expressly said the same controversy could not arise in the same way under the 1961 Act because section 143(3) directly determines loss. Do not transfer the 1922 Act procedure mechanically to current law.

01 FACTS OF THE CASE

The public company carried on manganese-ore mining and filed, on 23 April 1956, loss returns for AYs 1952-53 to 1954-55. The Income Tax Officer ultimately said no cognizance could be taken because they were outside the periods under sections 22(1) and 22(2A); the company did not appeal that intimation. Losses for AYs 1955-56 to 1959-60 were separately determined. In AY 1960-61 the company sought to carry forward losses beginning with AY 1950-51. The officer and AAC rejected the claim on a different-business view. The Tribunal held the business was the same and also directed quantification of the earlier undetermined losses. The Madras High Court upheld that approach. Revenue's Supreme Court appeals focused on whether the earlier refusal could be overcome in assessments for AYs 1960-61 and 1961-62.

Source: [SCR pp. 711-716 / PDF pp. 4-9](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court analysed the 1922 Act's sequence. Section 23(3) assessed total income, while section 24(3) separately required written notification of a computed loss; that notification was mandatory in the old scheme. Khushal Chand Daga dealt with an assessment and computed loss followed by failure to give the statutory intimation, which impaired the assessee's appeal on the amount and permitted later redetermination. Dalmia Cement was different at the anterior stage: the officer refused to make an assessment or determine the loss at all. That refusal was appealable under section 30, as illustrated by Kulu Valley Transport. Because the company did not appeal, it could not revive the issue during later-year assessments. The Court rejected the broader Bombay approach in All India Groundnut Syndicate while agreeing with the Madhya Pradesh and Patna treatment of such refusals as appealable. Under the 1961 Act, section 143(3) expressly determines income or loss, making section 157's later intimation directory rather than a substitute appellate trigger.

Source: [SCR pp. 716-732 / PDF pp. 9-25](#)

03 JUDICIAL DECISION

The Supreme Court allowed Revenue's appeals, set aside the High Court's judgment on Question 3 and answered that question for Revenue. The assessee's failure to appeal the officer's refusal meant it could not demand determination, carry-forward and set-off of the AY 1952-53 to 1954-55 losses in the later AY 1960-61 and 1961-62 proceedings. No costs were awarded. The High Court's opinions on Questions 2 and 4 were not questioned and were not reversed.

Source: [SCR p. 732 / PDF p. 25](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue on the appealable-refusal issue. The result finally denied the claimed later-year quantification and set-off route; it was not a remand. It did not disturb the separate findings that the businesses were the same or decide current-law entitlement to carry forward a loss under today's provisions.

Source: [SCR pp. 731-732 / PDF pp. 24-25](#)

05 AKHB REVIEW POINT

AKHB analysis: separate three procedural events-filing a loss return, an order refusing to assess it, and an assessment that computes loss but omits a required intimation. Preserve and challenge the actual refusal through the remedy available for that year instead of assuming a later assessment can reopen it. Before applying the case now, map the current return provision, time limit, assessment order, appeal route and loss-carry-forward condition; the Court expressly confined much of its reasoning to differences between the 1922 and 1961 Acts.

Source: [AKHB analysis based on SCR pp. 727-732 / PDF pp. 20-25](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

Full 25-page SCR report read; editorial headnote on PDF pages 1-4 distinguished from the judicial opinion beginning on PDF page 4 and continuing through page 25.

Open cited source rendition

All 25 source pages were read; exact PDF bytes, SHA-256 hash and page count match catalogue asset S_1995_2_708_732.

The printed report verifies Civil Appeal Nos. 745-46 of 1976, the three-judge bench and the opinion by B. P. Jeevan Reddy J.

The source distinguishes the headnote from the opinion and contains no numbered judicial paragraphs; SCR and physical-PDF page pinpoints are used.

The Court corrected factual assumptions in the reported Khushal Chand Daga line while preserving its bounded ratio concerning failure to notify an assessed loss.

STATUTORY SCOPE

The ratio arose under the 1922 Act's separate assessment and written-loss-intimation scheme. The Court explained that section 143(3) of the 1961 Act expressly determines income or loss and therefore changes the role of section 157. Present return deadlines, loss carry-forward and appellate remedies require independent current-law review.

LATER TREATMENT

Source checked 2026-10-10. Comprehensive later treatment and present procedural equivalence have not been verified; this is not current-law or citator clearance.

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