

Commissioner of Income Tax, Meerut, Etc. Etc. v. M/s. Virmani Industries Pvt. Ltd., Etc. Etc.

Civil Appeal No. 1052 of 1976 / Civil Appeal No. 2849 of 1977 / Civil Appeal No. 7372 of 1995

[1995] Supp.4 SCR 275 | 1995-10-12

Under the historical section 32(2), whether carried-forward depreciation required continuation of the same business or assets, or any business at all, and what amount could remain available after set-off against intervening years' income.

32(2), historical text | 32(1), current-depreciation background | 14 | 56 | 57(ii) | 72(1), historical continuity proviso discussed | 72(2) | 73(3) | 256(1)

Two-judge bench | B.P. Jeevan Reddy, J. | S.B. Majmudar, J.

Assessment years: 1965-66, 1963-64

Historical depreciation; residual-balance answer and two remands

The lead appeal permits only a balance remaining after intervening-year absorption; no surviving amount was determined. Two companion appeals were remanded, and the no-income-chain contention was expressly left undecided. Rs 70,700 belongs to one companion, not Virmani's lead claim. The source's 1956-57 statutory label and elapsed-year descriptions need caution. Comprehensive later treatment, current-law application and 2025 mapping remain unverified.

01 FACTS OF THE CASE

Virmani Industries manufactured soap and oil in the previous year relevant to AY 1956-57. It stopped that business, let the factory on hire, and received property income during the intervening years. In the previous year relevant to AY 1965-66 it began manufacturing steel pipes using part of the old machinery. For AY 1965-66 it claimed the earlier unabsorbed depreciation only to the extent attributable to that reused machinery, having made no claim against the intervening property income (physical pages 4-6 and 14-15 / SCR 278-280 and 288-289).

The ITO and AAC rejected the claim because the old and new businesses differed. The Tribunal accepted it, and the Allahabad High Court answered the section 256(1) question for the assessee. The High Court held that neither the same business nor the same assets had to continue, but considered some business necessary in the later year. Revenue's Civil Appeal No. 1052 of 1976 challenged that answer (physical pages 5-7 / SCR 279-281).

Two connected appeals required separate dispositions. No. 2849 of 1977 concerned Rs 70,700 of unabsorbed depreciation brought forward since AY 1952-53 and a claim against AY 1963-64 business income after the original source ceased. In No. 7372 of 1995 the Bombay High Court had declined to answer Revenue's reference after ten years without a filed paper-book; the report states no assessment year or claim amount for that appeal. The Rs 70,700 belongs only to the first companion appeal, not to Virmani's lead claim (physical pages 6 and 16 / SCR 280 and 290).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court read section 32(2) as it stood for the relevant period, together with the priorities in sections 72(2) and 73(3). It distinguished carried-forward business loss from unabsorbed depreciation. The historical business-loss continuation and time-limit restrictions were not automatically imported into depreciation. Relying on the binding three-judge decisions in Jaipuria China Clay Mines and Rajapalayam Mills, it treated “profits or gains chargeable” as extending across the statutory heads of income, rather than only the original business (physical pages 7–13 / SCR 281–287).

Neither continuation of the same business nor continued existence or business use of the assets that originally earned depreciation was a condition found in section 32(2). The Court also adopted the view that carrying on any business or profession in the later year was unnecessary, because the provision deemed carried-forward depreciation to be the allowance even if that year had no fresh depreciation allowance. This did not abolish the conditions for earning an original depreciation allowance; it concerned the treatment of an already unabsorbed allowance under the historical provision (physical pages 9 and 13–14 / SCR 283 and 287–288).

The breadth of eligible income did not let the taxpayer bypass intervening income. The AY 1956-57 allowance should first have been set off against property income in the following year, AY 1957-58, and thereafter against successive years' income. Only a balance remaining after that process could be available in AY 1965-66. The Court therefore replaced an unqualified affirmative answer with a conditional residual-balance answer; it did not determine the residual amount (physical pages 14–15 / SCR 288–289).

Revenue additionally argued that if a year with no income broke the chain of set-off, the chain could never restart. The Court expressly found it unnecessary to decide that contention. It must not be presented either as Revenue's accepted rule or as a rejected argument on which this judgment settled the consequences of every no-income gap (physical page 15 / SCR 289).

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

03 JUDICIAL DECISION

Civil Appeal No. 1052 of 1976 was disposed of by answering the reference conditionally: only any AY 1956-57 depreciation remaining unabsorbed after set-off against the income of the following assessment years could be set off for AY 1965-66. No costs were ordered (physical page 15 / SCR 289).

Civil Appeal No. 2849 of 1977 was allowed and remanded to the High Court for fresh disposal according to law and this judgment, because its facts were involved and the assessee was unrepresented. Civil Appeal No. 7372 of 1995 was also allowed and remitted to the High Court for disposal in light of the judgment. Each companion appeal carried no costs. Neither remand is a final quantified allowance or disallowance of depreciation (physical page 16 / SCR 290).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed / conditional: assessee-favourable statutory interpretation, qualified lead reference answer, and Revenue procedural success in two remands

No. 1052/1976 disposed of with conditional residual-balance answer; Nos. 2849/1977 and 7372/1995 allowed and remanded to the High Court; no costs in all three

Interpretation settled for the historical provision and lead reference conditionally answered; companion merits left for fresh High Court disposal

No quantified surviving allowance; no decision on the asserted permanently broken chain after a no-income year; no automatic application of this historical carry-forward regime to later statutory versions.

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

05 AKHB REVIEW POINT

Prepare a year-by-year roll-forward before applying the headline continuity principle. Establish the original allowance, income under the relevant heads in each intervening year, the applicable statutory priorities, the amounts absorbed and the actual balance. Discontinuance of the original business does not, under the provision interpreted here, justify saving depreciation intact for a later chosen year when intervening taxable income was available.

Keep original entitlement to depreciation separate from the deemed allowance carried forward. The Court's rejection of a same-business, same-assets or any-business requirement for the carried amount is not a ruling that an original allowance arises without its statutory conditions. The historical provision and its business-loss priority rules must be matched to each year in a live case; subsequent amendments may materially change the result.

Preserve all three dispositions. The reporter's broad "appeals allowed" label masks the conditional disposal of the lead reference and two remands. Do not attribute the companion's Rs 70,700 to Virmani or invent a year for No. 7372/1995. The Court expressly left the no-income-chain argument undecided. Subsequent treatment, current-law restrictions and 2025 mapping remain outside this bounded review.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Date, bench, Revenue posture and three-appeal structure

Source url: [Open cited source](#)

Pdf pages: 1; 4; 16

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: reported metadata and judicial text

2.

Topic: Lead claim years, reused assets and lower-authority decisions

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

3.

Topic: Statutory history, quoted historical section 32(2), priorities and other-heads setting

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

4.

Topic: Binding authorities and scope of all-heads interpretation

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12; 13

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

5.

Topic: No same-business, same-assets or any-business continuation requirement

Source url: [Open cited source](#)

Pdf pages: 13; 14

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

6.

Topic: Mandatory intervening-year absorption and conditional residual answer

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

7.

Topic: Expressly undecided no-income-chain contention and lead no-cost disposal

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

8.

Topic: Rs 70,700 companion question, two separate remands and no costs

Source url: [Open cited source](#)

Pdf pages: 16

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: 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: 16 PDF pages; SHA-256

e88c459ba0bf258b9bdbad7edcc9be6b53240cd84ce2d8510ae049f78d10908e. Original bytes preserved.

Complete judicial text physical pages 4–16 / SCR 278–290; editorial headnote pages 1–4 separated. Lead reference answer, two separate companion remands, historical statutory provisions, quoted earlier authorities and expressly undecided contention distinguished.

[Open cited source rendition](#)

The source covers three appeals, not only the lead No. 1052 shown in ingestion metadata. The lead was disposed of on a qualified answer; only the two companions were expressly allowed and remanded.; The headnote incorrectly describes an “appellant assessee”; the judicial body identifies Revenue as appellant and Virmani as respondent-assessee.; AY 1965-66 is the lead claim year; AY 1956-57 is its originating allowance year and AY 1957-58 is the first stated following year. The source calls the interval both “ten years” and “about eight years”; the note relies on the express years.; The source refers to section 32(1)(ii) in describing AY 1956-57. This historical label predates the 1961 Act and is reported as a source anomaly rather than used to certify that Act’s application to the originating year.; The Rs 70,700 since AY 1952-53 and the AY 1963-64 question belong to Civil Appeal No. 2849 of 1977. No AY or claim amount is supplied for No. 7372 of 1995.; The headnote’s Jaipuria citation has volume 56, while the judicial discussion uses 59 ITR 555. No separate primary review of Jaipuria or Rajapalayam is claimed.; The question whether a no-income year permanently breaks a set-off chain was expressly not decided. Business discontinuance and the absence of fresh depreciation do not erase that reservation.; The quoted historical section 32(2) remains subject to sections 72(2) and 73(3); subsequent statutory versions, comprehensive later treatment and 2025 equivalence are unverified.

Lead claim: AY 1965-66, depreciation originating in AY 1956-57, with set-off to be considered from AY 1957-58 onwards. Civil Appeal 2849/1977: AY 1963-64, Rs 70,700 brought forward since AY 1952-53. No assessment year is stated for Civil Appeal 7372/1995. Origin and intervening years are not additional identified lead assessment proceedings.

The central provision is historical section 32(2), expressly subject to sections 72(2) and 73(3). Sections 56 and 57(ii) are in the companion question. Earlier Indian Income-tax Act, 1922 section 10(2)(vi) and foreign/statutory history are explanatory sources, not present-law certification. The report itself refers to section 32(1)(ii) for the originating AY 1956-57; that anachronistic label is not independently validated.

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 subsequent-treatment search has been completed. Any specifically identified later primary passage is separately bounded and does not certify present law.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 16](#)

SHA-256: e88c459ba0bf258b9bdbad7edcc9be6b53240cd84ce2d8510ae049f78d10908e

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