

Associated Power Co. Ltd. v. Commissioner of Income Tax

Tax Reference Case Nos. 13–16 of 1981

[1995] Supp.5 SCR 721 | 1995-11-28

Whether a compulsory appropriation of electricity-business revenue to the statutory Contingencies Reserve is excluded by diversion of income or deductible as business expenditure when the money remains the company's and is reserved for possible future exigencies.

257

Three-judge bench | S.P. Bharucha, J. | Faizan Uddin, J. | S.B. Majmudar, J.

Assessment years: 1972-73, 1973-74

Company-owned reserve; four docket numbers versus three references

The reserve appropriation remained the company's income and was not expenditure; consumer rebates and actual later outgoings require separate analysis. The caption identifies References 13–16/1981, but the ending says “three references.” Rs 46,460 belongs to the lead reference, and costs are one unallocated Rs 10,000 figure. Selected later following and an insurance-code distinction are checked; comprehensive later treatment, current law and 2025 mapping remain unverified.

01 FACTS OF THE CASE

The Tribunal made direct references under section 257 because High Courts had disagreed on the tax treatment of the Contingencies Reserve required by the Electricity (Supply) Act, 1948. The printed caption covers Tax Reference Cases 13–16 of 1981. Each assessee generated and distributed electricity. The opening judicial text allocates AY 1973-74 to No. 13, AYs 1972-73 and 1973-74 to Nos. 14 and 15, and AY 1972-73 to No. 16 (physical pages 3–4 / SCR 723–724).

In the illustrative facts of No. 13, the company appropriated Rs 46,460 from its revenue to the Contingency Reserve account for the previous year relevant to AY 1973-74 and claimed a deduction in computing income. The ITO rejected it; the AAC allowed it relying on the Kerala and Bombay decisions; and the Tribunal restored disallowance following the contrary Madras view. The question referred asked whether the Tribunal was correct that the transferred sum was not deductible. The Rs 46,460 is the lead reference's appropriation, not a stated aggregate for all four docket numbers (physical page 4 / SCR 724).

The Sixth Schedule required creation from existing reserves or undertaking revenue, yearly appropriations linked to original fixed-asset cost, investment in authorised securities within six months, and restricted withdrawals with State Government approval. It also required the remaining reserve to accompany a sale of the undertaking, subject to the printed statutory conditions. These constraints generated the taxpayer's diversion and expenditure arguments (physical pages 6–7 / SCR 726–727).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished the Contingencies Reserve from the consumer-rebate reserve considered in Poona Electric. Amounts earmarked for return to consumers represented excess receipts to be returned and were excluded on that basis. The Contingencies Reserve instead remained available for the electricity company's own specified purposes: exceptional expenses or loss of profits from accidents, strikes or uncontrollable circumstances; qualifying replacement or renewal; and legal compensation for which no other provision existed. Even loss of the company's profits could be recouped. The reserve therefore belonged to the company (physical pages 7–8 and 14–15 / SCR 727–728 and 734–735).

Diversion by overriding title requires an obligation under which the income never reaches the taxpayer as its income. Here the quoted clauses required the reserve to be made from existing reserves or revenues which had reached the company. The company was required to invest the money; the investment would be in its own name and owned by it. Statutory compulsion, restricted investment choices and State approval for use did not establish ownership by somebody else. The Court rejected counsel's claim that the sums vested in the State Government (physical pages 15–16 / SCR 735–736).

The obligation to hand the reserve to the purchaser kept resources with the continuing undertaking. The Court found nothing in the statute before it that prevented the reserve from being considered in purchase price. It expressly did not decide the separate statute governing price on sale to a State Board or Government. Contrary statements in the earlier High Court passages quoted by the report must not be mistaken for this Court's adopted reasoning (physical pages 9–13 and 16 / SCR 729–733 and 736).

The alternative business-deduction argument also failed. A sum set aside against possible exigencies was not expenditure and was not a provision for known, existing liabilities. The judgment concerns the appropriation to the reserve; it does not decide the deductibility of every later payment actually made from it. The reasoning rejects the Kerala and Bombay approach to this reserve and adopts the Madras and Calcutta position described in the judgment (physical pages 13–16 / SCR 733–736).

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

03 JUDICIAL DECISION

The referred question was answered affirmatively and in favour of Revenue: the amount transferred to the Contingencies Reserve was not deductible, and it remained included in business profits because there was no diversion by overriding obligation or title. The references were disposed of. The assessee was ordered to pay Revenue costs quantified at Rs 10,000, with no per-reference or per-assessee multiplication stated. The ending describes "three references," while the caption and opening identify Nos. 13–16; the report does not reconcile that count (physical page 16 / SCR 736).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

References answered affirmatively for Revenue and disposed of; assessee to pay Revenue costs quantified at Rs 10,000

Final reasoned answer to the statutory-reserve deduction question under section 257

Appropriation to this statutory Contingencies Reserve, not a general denial of consumer rebates, actual accrued liabilities, later reserve-funded expenses, or deductions governed by a distinct special computation code. Four docket numbers versus “three references” remains a source discrepancy.

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

05 AKHB REVIEW POINT

Identify what the fund is, who owns it and whose liabilities it satisfies before treating statutory earmarking as diversion. Compulsory appropriation, an investment restriction and a requirement for regulatory approval do not by themselves transfer income away from the taxpayer. Keep a reserve for uncertain future events separate from an accrued liability and from amounts genuinely repayable to customers. For a live claim, trace the governing clauses, receipt, appropriation, investment ownership and eventual use; do not assume all electricity reserves share one result.

Bounded later check: Vellore Electric Corporation Ltd. v. CIT, decided 8 July 1997, expressly followed Associated Power on the Contingencies Reserve and upheld the Revenue answer to question 1 in Civil Appeals 2613–14/1984 (physical pages 9–10 / SCR 594–595 of S_1997_1_586_607). Vellore’s separate section 80-I interest issue had a different outcome (physical page 22 / SCR 607); that later question is not part of Associated Power’s holding.

Bounded later distinction: General Insurance Corporation of India v. CIT, decided 21 September 1999, held Associated Power inapplicable to the special insurance computation issue under section 44 and Rule 5(a) of the First Schedule. A reserve that was not expenditure could not there be added back using a rule whose prerequisites were not met (physical pages 7–12, specifically 11–12 / SCR 748–753 and 752–753 of S_1999_2_742_753). That distinction cautions against exporting an ordinary-business reserve result into a different statutory computation system. These are selected primary passages, not a comprehensive later-treatment search or present-law certification.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Date, bench and direct reference caption

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: reported metadata and judicial text

2.

Topic: Assessment-year allocation and Rs 46,460 lead appropriation

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: judicial text

3.

Topic: Statutory reserve creation, investment, permitted use and transfer

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: judicial text

4.

Topic: Consumer-rebate precedent and quoted divergent High Court reasoning

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10; 11; 12; 13; 14

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: judicial text

5.

Topic: Company ownership, absence of diversion and business-deduction rejection

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: judicial text

6.

Topic: Reference answer, count discrepancy and Rs 10,000 costs

Source url: [Open cited source](#)

Pdf pages: 16

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: judicial text

7.

Topic: Bounded later express following on Contingencies Reserve

Source url: [Open cited source](#)

Pdf pages: 9; 10

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: bounded later judicial text

8.

Topic: Bounded later special insurance-computation distinction

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10; 11; 12

Paragraphs: Exact physical PDF pages; SCR pagination supplied in the note. The relied-on source passages are unnumbered in these reports.

Source role: bounded later judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.P. Bharucha, 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

d71558443516f0ab06a983664ef01d8f91ba3dfed517c5781a3660ae2bc0516e. Original bytes preserved.

Complete judicial text physical pages 3–16 / SCR 723–736; editorial headnote physical pages 1–3 separated. Section 257 reference group, assessment-year allocation, statutory reserve clauses, quoted earlier decisions and operative ending individually distinguished.

[Open cited source rendition](#)

This is a direct section 257 reference group, not an ordinary merits appeal, notwithstanding the reporter's appellate-jurisdiction and party labels.; The caption and opening identify Tax Reference Cases 13–16/1981, but the operative paragraph says "three references." No correction or missing docket is invented.; Rs 46,460 is the No. 13 appropriation for AY 1973-74. The report does not state matching amounts for the other references.; Costs are a single Rs 10,000 figure payable by the assessee to Revenue. No per-case or per-company allocation is supplied.; The reserve appropriation is not expenditure and is not diverted income. The distinct consumer-rebate reserve and later actual payments are not decided by this negative deduction holding.; The quoted earlier High Court reasoning includes propositions rejected by the Supreme Court. The 1922 Act section 10(1) quotation is historical precedent, not the governing assessment statute here.; Physical page 8 is SCR 728; OCR misreads that printed number. The reported judicial text does not expressly identify a 1961 Act charging or general-deduction subsection.; Vellore and General Insurance have separately bounded later-source reviews. Comprehensive later treatment, present statutory law and 2025 mapping remain unverified.

No. 13/1981: AY 1973-74. Nos. 14 and 15/1981: AYs 1972-73 and 1973-74, respectively. No. 16/1981: AY 1972-73. The closing paragraph calls these "three references" despite the four-number caption and opening allocation; the note retains this discrepancy.

Section 257 is the expressly identified 1961 Act route for the substantive business-income deduction question. The judgment does not expressly number a 1961 Act charging or general-deduction section; no inferred section 28 or 37 tag is substituted for that silence. Section 10(1) appears in the quotation from Poona Electric under the earlier 1922 Act. Electricity (Supply) Act, 1948 section 57 and Sixth Schedule clauses III–V supply the operative reserve obligations; clause II concerns a different reserve mechanism.

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. The specifically identified later primary passages are separately bounded; they do not certify present law.

IDENTIFIED SOURCE LINKS

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

SHA-256: d71558443516f0ab06a983664ef01d8f91ba3dfed517c5781a3660ae2bc0516e

[bounded later judgment - PDF pages: 22](#)

SHA-256: c15798a1bd75d11c8b7d9f5cb6c2f9132a2188991436678f2cc08c4618aaf89b

[bounded later judgment - PDF pages: 12](#)

SHA-256: 04b2f841f8fd25d26d35310eef079e955f348ba903752282cb6d807077aee0f2

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