

M/s. Wilh. Wilhelmsen v. Commissioner of Income Tax, West Bengal-I

Civil Appeal No. 1206 of 1978

[1996] Supp. 3 SCR 231 | 1996-06-09

Historical foreign-shipping assessment: Rule 33 instructions validly restricted depreciation and ship-specific carry-forward under the 1922 Act.

Indian Income-tax Act, 1922: sections 5(8), 10(2)(vi), proviso (c), 24(2), 66 and 66A(2) | Indian Income-tax Rules, 1922: rules 8 and 33

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

Historical foreign-shipping method

The holding concerns a specific 1922 Act/Rule 33 method used where the Norwegian company furnished Indian-trade accounts rather than complete world accounts. It is not a general present-day depreciation rule.

Ship-specific limitation

The unabsorbed depreciation of Rs. 97,547 related to seven ships that did not enter Indian trade in the relevant accounting year. The result should not be abstracted from that instruction-based allocation mechanism.

Printed decision date retained

The SCR report and catalogue both print 9 June 1996. Although that calendar date was a Sunday, no contrary primary record was located in this bounded review, so it has not been silently changed.

01 FACTS OF THE CASE

The assessee was a Norwegian shipping company assessed for AY 1958-59 on calendar-year 1957 Indian trade. It did not furnish complete accounts of its world business, but kept separate annual accounts for round voyages to and from Indian ports. Applying the third method under rule 33 and the Board's shipping instructions, the Income Tax Officer refused depreciation on eight ships that had been in the fleet for more than twenty years. A further Rs. 97,547 of unabsorbed depreciation originating in AY 1953-54 had been allocated to seven ships that did not come to India during 1957. The officer initially allowed the set-off, but the AAC enhanced the assessment after both sides accepted that this was a mistake. The Tribunal ruled for the assessee; the Calcutta High Court answered the material questions for Revenue, and the assessee appealed by certificate.

Source: [SCR pp. 235-240](#) / [PDF pp. 5-10](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court read section 5(8), section 10(2)(vi), rule 33 and the detailed Board instructions together. Rule 33's third alternative permitted the officer to ascertain non-resident income in another suitable manner where the first two methods could not do so. The instructions filled the practical gap for foreign shipping lines and dealt expressly with companies furnishing only Indian-trade accounts. They required depreciation to be allocated by ship and Indian-trade days, allocated unabsorbed depreciation to particular ships, permitted its later use only against the same ship when again employed in Indian trade, and ended the allowance after twenty years. Those directions elucidated rule 33 and did not contradict section 10(2)(vi); the assessing officer was bound to follow them. The Court also stated the limiting principle that the Board's instruction power had to remain within the Act and rules and could not be used contrary to them. Since the seven ships did not enter Indian trade in the relevant year, the Rs. 97,547 could not be set off. Later High Court authority about contrary instructions did not alter the result because these instructions were found *intra vires*.

Source: [SCR pp. 240-246 / PDF pp. 10-16](#)

03 JUDICIAL DECISION

The Supreme Court affirmed the High Court's answers on the two contested questions: no depreciation was available for ships beyond the instructions' twenty-year limit, and the Rs. 97,547 allocated to seven ships not employed in Indian trade during 1957 could not be set off in AY 1958-59. It dismissed the assessee's appeal with consolidated advocate's fee of Rs. 10,000.

Source: [SCR pp. 245-246 / PDF pp. 15-16](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue on Questions 1 and 3. The assessee obtained no relief from the Supreme Court. Question 2, previously decided for the assessee and not appealed by Revenue, was outside the Supreme Court's operative determination.

Source: [SCR pp. 245-246 / PDF pp. 15-16](#)

05 AKHB REVIEW POINT

AKHB analysis: for an archival foreign-shipping depreciation dispute, first identify which rule 33 computation route was used and whether complete world accounts or only Indian-trade accounts were furnished. Trace depreciation and carried-forward amounts ship by ship, including the years and Indian-trade employment. Treat the Court's validation as tied to the instructions' consistency with the then Act and rules; it does not authorise an administrative circular to override legislation. Any current section 44B, depreciation or circular reliance requires a fresh statutory and later-treatment review.

Source: [AKHB analysis based on SCR pp. 240-246 / PDF pp. 10-16](#)

SOURCE & VERIFICATION

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

Full 16-page SCR report read; editorial headnote on PDF pages 1-5 distinguished from the judicial opinion beginning on PDF page 5 and continuing through page 16.

[Open cited source rendition](#)

All 16 source pages were read; exact PDF bytes, SHA-256 hash and page count match catalogue asset S_1996_3_231_246.

The printed report verifies the title, Civil Appeal No. 1206 of 1978, two-judge bench and opinion by B. P. Jeevan Reddy J.

The headnote contains typographical/OCR errors and is not used as the judicial reasoning; the opinion at SCR pp. 235-246 was read in full.

Question 2 concerning the vessel Tortugas had been answered for the assessee and was not appealed by Revenue; the Supreme Court appeal addressed Questions 1 and 3.

STATUTORY SCOPE

The decision applies the Indian Income-tax Act, 1922, the 1922 Rules and administrative instructions used for foreign shipping companies, in relation to AY 1958-59. The Court itself noted the later section 44B setting only through the certificate order. No current shipping-tax, depreciation or circular-law conclusion is represented.

LATER TREATMENT

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

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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