

Marshall Sons and Co. (India) Ltd. v. Income Tax Officer

Civil Appeal Nos. 1661–1662 of 1992

[1996] Supp. 9 SCR 216 | 1996-11-27

Whether the sanctioned scheme's 1 January 1982 transfer date governed the subsidiary's business income where the company courts approved the scheme without prescribing another transfer date, notwithstanding later sanction, filing and implementation steps.

139(2) (historical return notice) | 142(1) | 80J (incidental reference in the ITO's accounting-year conditions; no deduction issue decided)

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

Assessment years: 1984-85, 1985-86

Scheme-date relief with express reservations and chronology defects

The appeals and writ petitions succeeded on this sanctioned scheme's 1 January 1982 transfer date. The source contains conflicting sanction/filing dates and misnumbered references, which are not silently repaired. Protective-assessment observations were not an operative direction; the alternative accrual argument and tax-device allegation were not decided. Revenue's lawful separate proceedings were expressly preserved. Present company-law/tax procedure and comprehensive later treatment remain unverified.

01 FACTS OF THE CASE

Marshall Sons and Company (India) Ltd., the holding company, appealed as successor to Marshall Sons and Company (Manufacturing) Ltd., the subsidiary. The holding company used a June year-end; the subsidiary obtained permission to change from the calendar year to an 18-month period from 1 January 1982 to 30 June 1983. Its amalgamation scheme specified 1 January 1982 as the transfer date. A separate operative-date definition referred to filing certified sanction orders with the Registrars, and clause 6(b) treated the subsidiary's post-transfer business as carried on for the holding company (physical pages 3–4 and 13–14).

The opening judicial chronology states that Madras sanctioned the scheme on 21 November 1983 and Calcutta on 11 January 1984; certified copies were filed at Madras on 29 January 1984 and Calcutta on 24 February 1984. The subsidiary's name was struck off on 21 January 1986. Other passages contain conflicting dates, as disclosed below; they are not silently reconciled (physical page 4).

A notice dated 25 November 1984 under section 139(2) sought subsidiary returns for AY 1984-85 (period ending 30 June 1983) and AY 1985-86 (year ending 30 June 1984). A later section 142(1) notice required compliance by 7 February 1986. The company challenged the notices by writ petitions. The High Court rejected the scheme's earlier transfer date; Revenue also alleged a tax-avoidance device and raised alternative-remedy objections (physical pages 4–8).

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

02 DISCUSSION BY THE HON'BLE COURT

Reading the historical Companies Act, 1956 framework, particularly sections 391–394A, and the actual scheme, the Court held that an amalgamation scheme must specify a transfer date. The sanctioning court could substitute another date. But where it sanctioned the scheme as presented without a different date, the scheme's specified transfer date governed. Clause 6(b) expressly attributed the intervening business to the transferee. Later sanction orders, Registrar filings and share allotments did not, in these circumstances, replace 1 January 1982 as the amalgamation/transfer date (physical pages 8–16).

The Court accordingly held the impugned tax notices unwarranted. It discussed assessment of the combined income in the transferee's hands, with possible protective assessments, in response to Revenue's concern about a scheme eventually being refused. It then expressly said that line of inquiry did not arise directly and did not pursue it. These remarks are not an operative protective-assessment direction or a determination of a quantified set-off entitlement (physical pages 16–17).

The alternative submission about shareholder-meeting dates and income accruing only at the accounting year-end was not decided. Nor did the Court decide Revenue's allegation that the amalgamation was a tax-evasion device. Those limits are part of the disposition, not an inferred approval of every consequence of the scheme (physical pages 7–8 and 17).

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

03 JUDICIAL DECISION

The two appeals were allowed and the appellant's High Court writ petitions were deemed allowed, with no costs. The impugned notices were held unwarranted on the transfer-date reasoning. The Court expressly left Revenue free, if legally entitled, to raise its tax-device allegation by separate proceedings according to law; it expressed no view on that allegation (physical pages 16–17).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Appellant successor company on the impugned notices and amalgamation-date issue

Appeals allowed; writ petitions deemed allowed; no costs; tax-device issue expressly reserved for lawful separate proceedings

Final relief against the notices on the sanctioned-scheme transfer-date issue, with the alleged tax-evasion device left undecided

No general immunity from tax inquiry after amalgamation, no automatic approval of a proposed scheme, no adjudicated loss set-off or fresh tax computation, and no operative protective-assessment order.

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

05 AKHB REVIEW POINT

Read the sanctioned scheme and both sanction orders together. Record separately its appointed/transfer date, implementation conditions, filing-defined operative date, any date actually substituted by the court, and the provision attributing interim business. The judgment turns on sanction without a substituted transfer date and the express interim-business clause; a proposed or differently sanctioned scheme is not the same record.

Preserve the two procedural limits. First, the discussion of possible protective assessments answers a hypothetical practical objection and was not pursued as an issue directly arising. Second, the tax-device allegation was expressly left open for any separate proceedings legally available. The case does not certify the commercial purpose of this amalgamation or confer a general right to set off one company's losses against another's profits.

The report contains material chronological and numbering defects. Use the actual scheme and sanction/filing records for transaction advice; this note does not certify those underlying documents independently. The Companies Act, 1956 and historical return-notice setting must be kept separate from later company-law and income-tax procedure. No comprehensive later-treatment review, present statutory mapping or automatic Income-tax Act, 2025 carryover is claimed.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, two appeals and opening assessment/sanction chronology

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4; 5

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: High Court reasoning, conflicting dates and alternative submission

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Historical statutory framework quoted and explained

Source url: [Open cited source](#)

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

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Scheme definitions, clauses and transfer-date holding

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15; 16

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Protective-assessment limit, unaddressed alternative argument and reserved tax-device allegation

Source url: [Open cited source](#)

Pdf pages: 16; 17

Paragraphs: Unnumbered judicial text

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: 17 PDF pages; SHA-256

5b78e8ef6c3600d837923aa32412613002d9be28b56f8592dedd9303a0744169. Original bytes preserved.

Complete judicial text physical pages 3–17/SCR 218–232, plus editorial pages; scheme transfer date, operative-date definition, source chronology conflicts, protective-assessment discussion and express tax-device reservation kept distinct.

[Open cited source rendition](#)

The headnote assigns sanction dates 21 November 1983 and 11 January 1983 to Calcutta and Madras respectively; the judicial opening on page 4 instead gives Madras 21 November 1983 and Calcutta 11 January 1984. The note expressly attributes the opening chronology and leaves the printed contradiction visible.; Pages 6 and 15 describe January 20, 1984/February 24, 1984 as approval/operative dates, inconsistent with page 4's sanction chronology and January 29, 1984/February 24, 1984 filing dates. No choice among these as independently proven underlying dates is made.; Page 3 ends with December 12, 1982 although the preceding narration uses December 31; page 7's alternative argument uses February 1, 1982 although the scheme, reasoning and holding repeatedly use January 1, 1982. The clear scheme date governs the note's holding.; Page 9's quotation of section 391(3) describes an order under subsection (3); page 14 calls the sanction-condition text clause (6), while its reproduced scheme labels it clause 7. These printed cross-reference anomalies were image-checked; the report is not presented as a certified transcription of the bare Act or original scheme.; The primary caption gives two appeals but the jurisdiction line names only W.P. No. 1908 of 1986, while the judgment and final relief use plural writ petitions. No second writ-petition number or appeal-year pairing is invented.; The first headnote broadly describes a return period to January 21, 1986, but the judicial narrative specifies the two assessment years and their June period-ends. The latter limits this note's assessment-year identification.; No tax-device finding, quantified tax liability or final carried-forward-loss/section 80J entitlement was decided. The alternative accrual argument was left unnecessary, not accepted.

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 statutory passage is separately identified and bounded in this note.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 17](#)

SHA-256: 5b78e8ef6c3600d837923aa32412613002d9be28b56f8592dedd9303a0744169

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