

The Commissioner of Income Tax (Cntl.), Ludhiana v. M/s Hero Cycles Pvt. Ltd., Ludhiana Etc. Etc.

CA 7665/1996 and connected proceedings (full list below)

[1997] Supp 3 SCR 612 | 1997-08-28

The Commissioner of Income Tax (Cntl.), Ludhiana v. M/s Hero Cycles Pvt. Ltd., Ludhiana Etc. Etc.

35B(1)(b) (historical; sub-clause-specific claims) | 154 | 256(2) | 44 and First Schedule (insurance group) | 40C (separate question dismissed without reasons) | 28-43B and 29 (insurance-computation discussion)

Two-judge bench | Suhas C. Sen, J. | S. Saghir Ahmad, J.

Assessment years: See the source-scope notes; no year inferred.

Historical omnibus order; different issues and different outcomes

The lead section 154 appeal was allowed for Revenue, while companions include limited remands, final disallowances, insurance appeals dismissed under section 44, a separate section 40C dismissal and bare dismissals. Remand is not allowance. The SLP 10982 year differs internally between 1997 and 1987. Section 35B was omitted from 1 April 1989; no current export relief, comprehensive circulars rule, current-law certification or verified later treatment is supplied.

01 FACTS OF THE CASE

The lead appeal concerned export sales commission, ECGC charges and foreign-dealer visiting expenses. Section 35B relief had not originally been allowed; after appellate directions for verification and proportionate allowances, the ITO used section 154 rectification to allow additional items. The High Court declined to call for a reference under section 256(2) (physical pages 2-3).

The reported order also resolves numerous separate taxpayers' appeals and petitions. These include HHEC/STC/ECGC payments, a spindle-fee contribution, miscellaneous export-related expenditure, an insurance-computation group and a separately dismissed section 40C question. The source does not identify every companion taxpayer or assessment year; the lead title is not a basis for attributing all companion facts to Hero Cycles (physical pages 3-12).

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

02 DISCUSSION BY THE HON'BLE COURT

In the lead appeal, rectification required an apparent, glaring mistake. A debatable mixed question of fact and law, including a point never examined on its facts or legal basis, could not be introduced through section 154. The Tribunal's allowance was therefore erroneous (physical pages 2–3).

For the section 35B companions, the assessee had to prove expenditure incurred wholly and exclusively for a specified statutory purpose. A general export connection, percentage allocation or payment to an export intermediary did not replace findings linking the expense to the applicable sub-clause. Some matters warranted a fresh evidential examination; others were finally rejected. The Rs 1,52,694 Indian Cotton Mills Federation contribution was a general export-promotion payment outside the specified purposes (physical pages 3–6 and 8–12).

In SLP 10982/1997 as headed, the document tendered as a CBDT circular dated 9/13 April 1981 was treated as a letter requiring case-specific fact finding. The Court observed that departmental circulars could bind an ITO but not appellate authorities, the Tribunal, the Court or the assessee; the actual document did not support automatic relief. That discussion belongs to this particular remand and should not be detached into a complete present-law circulars doctrine (physical pages 4–5).

The insurance group failed on section 44: the statutory range from sections 28 to 43B included section 35B, and the First Schedule governed computation of insurance profits. The Court declined to address other High Court questions because the argument before it was confined to section 35B. The separate section 40C limb in SLP 8620/1995 was dismissed without substantive explanation (physical pages 6–8).

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

03 JUDICIAL DECISION

The lead CA 7665/1996 was allowed for Revenue, with the proposed question treated as referred to the Supreme Court and answered against the allowance. Numerous companions were remitted to the Tribunal, but CA 6942/1995 and CA 3120/1995 had expressly limited surviving issues. Other groups were dismissed, including the insurance appeals; CA 7965/1996 was dismissed on the small amount and age of the matter without endorsing the Tribunal's correctness. The precise twenty-group dispositions are preserved below. Costs were normally nil where stated, but the assessee in the SLP 10982/1997 group was ordered to pay Rs 5,000 (physical pages 2–12).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed omnibus result; lead appeal for Revenue; multiple factual remands and dismissals

Individual appeal and petition dispositions; no single across-the-board taxpayer victory or rejection

Final lead rectification ruling and specific merits rejections; other claims open only within each remand

Unidentified companion taxpayers, unargued questions and bare dismissals do not acquire a new merits holding from the lead caption.

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

05 AKHB REVIEW POINT

Use an expense-to-sub-clause schedule with evidence of who incurred the cost, the service actually obtained and its statutory purpose. Neither an export label nor an intermediary invoice establishes the historical weighted deduction. Separately test whether the procedural route permits the issue to be reopened: a factual merits exercise cannot be disguised as an apparent-error correction.

Read each operative group. In CA 6942/1995, both HHEC and ECGC remain open despite an earlier sentence mentioning only HHEC; the final directions expressly include both. In CA 3120/1995 only STC/HHEC/ECGC commissions remain. The general expenses rejected in those groups cannot be restored by borrowing a broader companion remand.

Section 35B is historical. The checked Department text limits the immediately-pre-omission allowance to expenditure before 1 March 1983, and the checked omission record gives 1 April 1989 under the Direct Tax Laws (Amendment) Acts of 1987/1989. Its successive sub-clause versions must not be conflated. The judgment does not revive an export allowance, certify today's insurance computation or settle every issue about CBDT directions; comprehensive later treatment remains unverified.

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

APPEAL AND PROCEEDING NUMBERS

CA 7665/1996 / CA 7666-7667/1996 / SLP(C) 7485/1986 / SLP(C) 4588-4589/1989 / CA 7965/1996 / SLP(C) 9027/1987 / SLP(C) 10982/1997 (as printed in its heading) / SLP(C) 4663-4665/1989 / SLP(C) 8620/1995 / SLP(C) 10949/1995 / SLP(C) 9065/1994 / CA 1494-1496/1988 / CA 5567/1990 / SLP 4671/1988 / CA 5755/1995 / CA 4043/1984 / CA 7763/1995 / CA 7045/1995 / CA 12419/1996 / CA 5620-5621/1995 / CA 6942/1995 / CA 387/1985 / CA 786-788/1995 / CA 7847/1995 / CA 2230-2231/1995 / CA 3120/1995

DETAILED DISPOSITION AND CONNECTED GROUPS**Appeal groups**

1.

Case numbers: CA 7665/1996

Pdf pages: 2; 3

Disposition: Allowed; question answered in the negative and for Revenue; no costs

Scope: Section 154 could not be used to allow the unexamined/debatable weighted-deduction claim; no remand.

2.

Case numbers: CA 7666-7667/1996; SLP(C) 7485/1986; SLP(C) 4588-4589/1989

Pdf pages: 3; 4

Disposition: Leave granted where required; appeals allowed; High Court and Tribunal orders set aside; remand to Tribunal; no costs

Scope: One per cent HHEC margin and Rs 1,87,476 total payment required factual and sub-clause examination.

3.

Case numbers: CA 7965/1996

Pdf pages: 4

Disposition: Dismissed; no costs

Scope: Rs 10,000 and 23-year age of dispute; expressly no opinion on correctness of Tribunal decision.

4.

Case numbers: SLP(C) 9027/1987

Pdf pages: 4

Disposition: Special leave petition dismissed

Scope: No reasons or merits ratio supplied.

5.

Case numbers: SLP(C) 10982/1997 (as printed in its heading)

Pdf pages: 4; 5

Disposition: Leave granted; High Court and Tribunal orders set aside; remand to Tribunal; assessee to pay Rs 5,000 costs

Scope: Only section 35B addressed; the purported CBDT circular was a letter and did not establish automatic allowance.

6.

Case numbers: SLP(C) 4663-4665/1989

Pdf pages: 5

Disposition: Leave granted; orders set aside; Tribunal remand; appeals disposed of; no costs

Scope: Assessee to prove claim and fit within the applicable sub-clauses.

7.

Case numbers: SLP(C) 8620/1995

Pdf pages: 6

Disposition: Leave granted; section 40C limb dismissed; section 35B remitted to Tribunal; no costs

Scope: Do not transfer the section 35B remand to the separately dismissed section 40C limb.

8.

Case numbers: SLP(C) 10949/1995

Pdf pages: 6

Disposition: Leave granted; High Court and Tribunal orders set aside; Tribunal remand; no costs

Scope: Section 35B only; facts and applicable sub-clauses to be examined.

9.

Case numbers: SLP(C) 9065/1994; CA 1494–1496/1988; CA 5567/1990

Pdf pages: 6; 7; 8

Disposition: Leave granted where required; appeals dismissed; High Court upheld; no costs

Scope: Insurance profits computed under section 44 and First Schedule; additional section 35B claim rejected. Other High Court questions were not before the Court.

10.

Case numbers: SLP 4671/1988; CA 5755/1995; CA 4043/1984

Pdf pages: 8

Disposition: Leave granted where required; appeals dismissed; no costs

Scope: Applies National Palayacot, CA 16–17/1985; no independent facts or reasoning supplied in this group.

11.

Case numbers: CA 7763/1995

Pdf pages: 8; 9

Disposition: Allowed; orders set aside; question answered for Revenue; Tribunal to reconsider; no costs

Scope: Unlinked car, motorcycle, generator and proportional expenditure allowances require itemwise examination; no final universal exclusion of every listed item.

12.

Case numbers: CA 7045/1995

Pdf pages: 9

Disposition: Allowed; High Court and Tribunal orders set aside; no costs

Scope: Rs 1,52,694 spindle-fee contribution to Indian Cotton Mills Federation export-promotion fund held outside the sub-clauses; no remand stated.

13.

Case numbers: CA 12419/1996

Pdf pages: 9

Disposition: Allowed; no costs

Scope: Refers to observations in SLP 10982/1987 as printed; this conflicts with earlier heading 10982/1997. No independent reasons or fresh express remand supplied.

14.

Case numbers: CA 5620–5621/1995

Pdf pages: 9; 10

Disposition: High Court and Tribunal orders set aside; Tribunal remand; no costs

Scope: Facts and relevant section 35B sub-clauses to be examined.

15.

Case numbers: CA 6942/1995

Pdf pages: 10

Disposition: Allowed; orders set aside; limited Tribunal remand; no costs

Scope: HHEC and ECGC payments only remain for reconsideration; all other listed association/general establishment items stand disallowed.

16.

Case numbers: CA 387/1985

Pdf pages: 10

Disposition: Dismissed; no costs

Scope: No reasons or standalone merits proposition stated.

17.

Case numbers: CA 786–788/1995

Pdf pages: 10

Disposition: Appeals dismissed

Scope: No reasons or costs direction stated in this short order.

18.

Case numbers: CA 7847/1995

Pdf pages: 11

Disposition: Allowed; High Court and Tribunal orders set aside; Tribunal remand; no costs

Scope: Foreign sales commission, ECGC charges and presentation articles require sub-clause examination.

19.

Case numbers: CA 2230–2231/1995

Pdf pages: 11

Disposition: Appeals dismissed; no costs

Scope: No reasons or standalone merits proposition stated.

20.

Case numbers: CA 3120/1995

Pdf pages: 11; 12

Disposition: Allowed; High Court and Tribunal orders set aside; limited Tribunal rehearing; no costs

Scope: Only commissions to STC, HHEC and ECGC remain for reconsideration; unproved salary, directors' remuneration, rent and other general expenses are disallowed.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, lead rectification facts and operative answer

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: HHEC payment remand, aged small claim and bare SLP dismissal

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Purported circular, narrow question and Rs 5,000 costs

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Separate section 40C limb and insurance-computation appeals

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Vehicle/general-expense remand, spindle contribution and cross-reference mismatch

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: Unnumbered judicial text

Source role: judicial text

6.

Topic: Restricted HHEC/ECGC remand and summary dismissals

Source url: [Open cited source](#)

Pdf pages: 10

Paragraphs: Unnumbered judicial text

Source role: judicial text

7.

Topic: Presentation expenses and STC/HHEC/ECGC-only rehearing

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text

8.

Topic: Historical omission of section 35B

Source url: [Open cited source](#)

PDF pages: 268

Paragraphs: Section 35B omission record and footnote 71

Source role: bounded historical statutory text

9.

Topic: Final historical expenditure cutoff and changed sub-clauses

Source url: [Open cited source](#)

Paragraphs: Section 35B omission note and historical subsection (1)(a)/clause (b)

Source role: bounded historical statutory text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Order of the Court; no individual author stated

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 12 PDF pages; SHA-256

553d289c0a3ebe861fc4c164ac7ce8e8539480d6ed76474486e36a946614e1bd. Original bytes preserved.

Complete unnumbered judicial text, physical pages 2–12/SCR 613–623; twenty separately headed appeal/petition groups, including section 154, section 44 and section 40C boundaries.

[Open cited source rendition](#)

The source comprises twenty separately headed appeal/petition groups. Its combined title does not establish identical parties, years or results for them all.; The SLP heading at physical page 4 is 10982/1997; CA 12419/1996 at page 9 cites 10982/1987. Both were checked in images; the internal year mismatch is retained, not silently repaired.; The opening lead paragraph calls the question referred, but immediately records refusal under section 256(2); the operative Supreme Court treatment is preserved.; The phrase section 35(1)(b) on page 9 is read in its surrounding section 35B context; the duplicated amount wording in the question at page 8 is not treated as two additional expenditure findings.; CA 7965/1996 expressly avoids approval of the Tribunal's correctness. Bare dismissals and the National Palayacot applying group are not converted into new reasons.; The section 40C dismissal and insurance group are distinct from the ordinary exporter remands; other insurance High Court questions were expressly outside the argument.; The Rs 5,000 costs order is confined to the SLP 10982/1997 group. No uniform no-costs proposition is asserted for the entire source.; The checked immediately-pre-omission statutory text does not establish the particular version or year for every companion appeal.

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. Comprehensive subsequent judicial and statutory treatment has not been verified. Only the expressly identified bounded statutory checks are claimed; no current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 12](#)

SHA-256: 553d289c0a3ebe861fc4c164ac7ce8e8539480d6ed76474486e36a946614e1bd

[official department hosted historical statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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