

General Insurance Corporation of India v. Commissioner of Income Tax, Bombay

Civil Appeal No. 3283 of 1998

[1999] Supp. 2 SCR 742 | 1999-09-21

Whether the AY 1977-78 preference-share redemption reserve debited under the nationalisation accounting rule could be added back as inadmissible expenditure under the then First Schedule rule 5(a).

44 | First Schedule, rule 5(a) (historical text) | 30-43A (historical cross-reference) | 256(1)

Two-judge bench | S. Rajendra Babu, J. | R.C. Lahoti, J.

Assessment years: 1977-78

Historical rule 5 text; cover headnote reverses the cross-enactment point

This AY 1977-78 reserve was outside the then rule 5(a) add-back; it was not declared ordinary deductible expenditure. The cover headnote wrongly gives section 44 overriding force over other enactments. The judicial body also distinguishes Colaba rather than generally overruling it. A bounded 2011 compilation check records materially expanded reserve/provision wording from 1 April 1989 and a changed computation starting point from 1 April 2011. Apply the relevant-year text; comprehensive later treatment remains unverified.

01 FACTS OF THE CASE

The wholly Central Government-owned general insurer received government capital in preference and equity shares following nationalisation. For AY 1977-78, corresponding to the accounting year ending 31 December 1976, its income was admittedly governed by rule 5 of the First Schedule. It debited Rs 3,00,30,700 to its profit and loss account and transferred that amount to the preference-share capital redemption account, as permitted by rule 2(2)(a) of the General Insurance Business (Nationalisation) Rules, 1973 (physical pages 4-6).

The ITO added the amount back. The first appellate authority deleted the addition by following its AY 1976-77 order; the Tribunal dismissed Revenue's appeal by following its own AY 1974-75 order dated 26 September 1978. These earlier years are procedural precedents, not additional years decided by this Supreme Court appeal. The Bombay High Court answered the section 256(1) reference for Revenue, prompting the assessee's appeal (physical pages 6-8).

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

02 DISCUSSION BY THE HON'BLE COURT

Under the text applicable to AY 1977-78, rule 5(a) first required expenditure or an allowance, and then inadmissibility under sections 30–43A. Setting aside a reserve for future preference-share redemption was neither expenditure in the ordinary commercial sense nor an allowance of the nature covered by those sections. Its permissibly appearing on the expenditure side of the accounts did not change its underlying character for rule 5(a) (physical pages 7–9).

The nationalisation rule supplied an accounting method for dealing with the Corporation's profits and receipts. Section 44's non-obstante clause operated within the Income-tax Act; the Court expressly rejected treating it as overriding the other enactment. The cover headnote states the reverse and must not be followed (physical page 1 compared with pages 9–10). The Court also relied on the Schedule's special computation machinery: the ITO had no general power outside that machinery to rewrite qualifying insurance accounts. This does not eliminate the adjustments expressly authorised by the applicable rule (physical pages 10–11).

Anarkali Sarabhai, Associated Power and Colaba Central concerned different settings and did not decide section 44/First Schedule applicability. The judicial text distinguishes their relevance here; it does not adopt a general deduction for redemption reserves or an overriding-title exclusion (physical pages 11–12).

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

03 JUDICIAL DECISION

The assessee's appeal was allowed. The High Court judgment was set aside, and the referred question was directed to stand answered in the affirmative, for the assessee and against Revenue. The disputed Rs 3,00,30,700 reserve was not to be added back under the historical rule. There was no order as to costs and no remand (physical page 12).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Appeal allowed; High Court judgment set aside; reference answered for the assessee; no order as to costs

Final on the identified AY 1977-78 reserve and the then rule 5(a)

Special historical insurance computation, not an ordinary business-expense deduction or a blanket prohibition on statutory adjustments to insurers' accounts.

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

05 AKHB REVIEW POINT

Begin with the exact assessment-year version of section 44 and rule 5, then identify what the reserve represents and which provision authorises the accounting entry. A debit labelled expenditure is not by itself decisive; equally, this judgment cannot be applied to every reserve under later wording.

A separately bounded check of the Department-hosted 2011 compilation shows that rule 5(a) was expanded to include specified debited provisions/reserves from 1 April 1989, and the starting point became profit before tax and appropriations from 1 April 2011 (physical pages 1007–1008, footnotes 51–53). Those changes are not adjudicated here. Do not use the erroneous headnote to claim section 44 overrides other enactments, or label the distinguished Colaba decision generally overruled.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, year, reserve amount and appellate history

Source url: [Open cited source](#)

Pdf pages: 1; 4; 5; 6; 7

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Threshold conditions and reserve/accounting distinction

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Contrary cover headnote and actual section 44 limitation

Source url: [Open cited source](#)

Pdf pages: 1; 9; 10

Paragraphs: Unnumbered judicial text

Source role: reported editorial and judicial comparison

4.

Topic: Special computation, distinguished precedents and operative order

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Bounded historical statutory changes to rule 5

Source url: [Open cited source](#)

Pdf pages: 1007; 1008

Paragraphs: First Schedule rule 5 and footnotes 51–55

Source role: bounded historical statutory comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.C. Lahoti, J.

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

04b2f841f8fd25d26d35310eef079e955f348ba903752282cb6d807077aee0f2. Original bytes preserved.

Complete unnumbered judicial text from physical page 4/SCR 745 to physical page 12/SCR 753. Editorial headnote occupies pages 1–4; its contrary non-obstante summary and treatment label are not adopted.

[Open cited source rendition](#)

The cover headnote says section 44 overrides provisions of other enactments. Judicial pages 9–10 expressly say Parliament did not give it that effect; the judicial body controls.; The headnote labels Colaba Central disapproved; judicial pages 11–12 say the three cited cases are inapplicable because none concerned section 44 and the First Schedule. No general overruling is asserted.; AY 1977-78 alone is in this Supreme Court appeal. AYs 1976-77 and 1974-75 concern earlier orders followed below, not separate Supreme Court dispositions.; The source quotes the then sections 30–43A wording and notes the later 43B substitution. The 2011 compilation additionally records the material reserve/provision wording effective from 1 April 1989 and the starting-point change from 1 April 2011.; The 1922 Act insurance authorities are cited by the Court by analogy; this case itself directly determines a 1961 Act reference. No new deduction under ordinary business provisions or diversion-of-income holding is invented.

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 comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

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

SHA-256: 04b2f841f8fd25d26d35310eef079e955f348ba903752282cb6d807077aee0f2

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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