

M/s Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi-I

Civil Appeal No. 7115 of 2005 and connected proceedings (full list below)

[2007] 2 SCR 289 | 2007-02-06

Before the Finance Act, 2002 change, could section 271(1)(c) penalty be levied when the return ultimately assessed remained a reduced loss, and was the amendment clarificatory or prospective?

271(1)(c) | 271(1)(iii) | Explanation 4(a) to section 271(1) | 260A

Two judges | Ashok Bhan, J. | Dalveer Bhandari, J.

Assessment years: 1996-97

Overruled principal rule: do not rely on Virtual Soft's loss exemption

Gold Coin Health Food (three judges, 18 August 2008), paragraphs 10-11 and 17, rejected Virtual Soft's no-penalty-on-reduced-loss rule and its prospective-only treatment of the 2002 amendment. The historical assessee-favouring disposal remains described as made; no automatic reopening is inferred. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified.

01 FACTS OF THE CASE

This is a historical judgment whose principal no-penalty/prospective-amendment rule was overruled by the three-judge decision in Gold Coin Health Food on 18 August 2008. Its facts, reasoning and result below describe what the two-judge Bench decided on 6 February 2007; they are not a statement of the surviving rule.

The Court disposed of nine appeals together and took the facts from Civil Appeal 7115/2005. For AY 1996-97, Virtual Soft returned income before depreciation of Rs. 1,32,44,507.29 and claimed aggregate depreciation of Rs. 1,47,97,995.01, including Rs. 15,53,487.72 brought forward from AY 1995-96. Paragraph 6 calls the return nil with unabsorbed depreciation carried forward. The initial assessment dated 30 March 1999 arrived at positive income of Rs. 47,03,120 after disputed film-lease depreciation, a reduction in vehicle depreciation, unexplained share-application money and treatment of film-lease rentals (physical 5-6/SCR 293-294, paragraphs 2-6).

After the Commissioner set aside that assessment, the fresh assessment dated 19 March 2002 removed the film rentals as well as the film depreciation because the transactions had been treated as bogus, reduced the unexplained share money to Rs. 1,15,000 and retained the vehicle-depreciation reduction. Paragraphs 7 and 7(viii) record a resulting loss of Rs. 11,02,255; paragraph 8 instead prints Rs. 11,02,225. The note preserves that discrepancy rather than silently reconciling the report's arithmetic (physical 6-7, paragraphs 7-8).

The penalty authority aggregated the disallowed film depreciation, vehicle depreciation and residual share-money addition to Rs. 68,94,982, computed tax sought to be evaded at Rs. 31,71,692 and imposed penalty at 100% of that figure in September 2002. The day is printed nil. The Commissioner confirmed it on 24 December 2002; the Tribunal removed it on 11 May 2004 using Prithipal Singh. Delhi High Court allowed Revenue's section 260A appeal on 29 July 2005, holding that the post-1 April 1976 Explanation 4 permitted penalty notwithstanding the loss (physical 7-9, paragraphs 9-14).

The assessees argued that positive income and tax payable remained prerequisites, that the majority of High Courts favoured their construction, and that the Finance Act, 2002 change was substantive and prospective. Revenue defended the High Court's interpretation. The correctness of every underlying disallowance was not separately adjudicated in this common legal ruling (physical 9-11, paragraphs 15-20).

Source: [reported judgment / paragraphs Paragraphs 2-20; SCR 293-299 / PDF pages 5, 6, 7, 8, 9, 10, 11 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court set out section 271(1)(c), clause (iii) and Explanation 4 in their pre-1976, post-1976 and post-2002-amendment forms. Treating the penalty provision as requiring strict construction, it separated the conditions for penalty from the measure of penalty. It regarded the 1976 switch from concealed income to tax sought to be evaded as a change in computation, not removal of a supposed requirement that tax first be payable. Its paragraph 28 therefore held that a returned loss remaining a reduced loss attracted no penalty (physical 11-15/SCR 299-303, paragraphs 21-28).

The Bench extended Prithipal Singh to the post-1976 period, preferred the predominant High Court view and rejected the contrary approaches in P.R. Basavappa & Sons and Chemiequip. It compared the treatment of losses under section 143(1A), observing that the Finance Act, 1993 amendment there was expressly retrospective from 1 April 1989, whereas the section 271 amendment specified 1 April 2003 (physical 15-18/SCR 303-306, paragraphs 29-37).

Relying on Elphinstone's additional-tax reasoning and the integrated charge/computation approach in B.C. Srinivasa Setty, the Court treated total income as requiring a positive figure for this computation and treated the phrase concerning tax payable as a condition of penalty. It distinguished Angidi Chettiar because that case involved the different statutory setting of registered firms under the 1922 Act (physical 18-22/SCR 306-310, paragraphs 38-49).

For the 2002 amendment, the Bench considered the stated commencement, the absence of an express declaratory label in the enactment, and the distinction between the statute and Notes on Clauses. It concluded that the amendment enlarged the charge to the loss situation and applied prospectively. It also invoked strict fiscal-penalty construction and Article 20(1) in that historical reasoning; no enactment was struck down. Paragraph 59 rejected Basavappa and Chemiequip, and paragraph 60 treated 1 April 2003 as the change point (physical 22-26/SCR 310-314, paragraphs 50-60).

These central conclusions must be read with Gold Coin's later direct rejection. Gold Coin held that income includes negative profit, that the pre-amendment Explanation already reached reduction of a returned loss, and that the 2002 amendment clarified rather than created that liability. It also rejected treating the specified commencement date as conclusive of whether an amendment is clarificatory (Gold Coin, physical 9-12 and 14-17, paragraphs 6-12 and 14-17).

Source: [reported judgment / paragraphs Paragraphs 21-60; SCR 299-314 / PDF pages 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 / judicial text](#); [bounded later direct treatment / paragraphs Gold Coin paragraphs 6-12 and 14-17 / PDF pages 9, 10, 11, 12, 14, 15, 16, 17 / judicial text](#)

03 JUDICIAL DECISION

The Supreme Court allowed all nine appeals and set aside the impugned judgment, holding historically that before the Finance Act, 2002 amendment penalty could not be imposed where there was no positive income and no tax levied. It rejected the contrary Karnataka and Bombay High Court views and stated that the position changed from 1 April 2003. The final paragraphs contain no express costs order or separate remand direction (physical 26/SCR 314 D-F, paragraphs 59-60). Gold Coin later overruled that principal rule; this note does not describe the original appeal outcomes as automatically reopened.

Source: [reported judgment / paragraphs Paragraphs 59-60; SCR 314 D-F / PDF pages 26 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee-appellants in this 6 February 2007 historical disposal; principal legal rule later overruled

All nine appeals allowed; impugned judgment set aside

Substantive penalty-applicability ruling, later rejected on the central loss/clarificatory-amendment issue by a larger Bench

Do not rely on the no-positive-income rule or prospectivity conclusion as surviving law. No conclusion on automatic reopening, present penalty liability or each underlying assessment addition is supplied.

Source: [reported judgment / paragraphs Nine-appeal list and common final paragraphs 59-60 / PDF pages 4, 26 / judicial text](#)

05 AKHB REVIEW POINT

The larger-Bench treatment is essential to this historical note. In Gold Coin Health Food, decided by Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ. on 18 August 2008, paragraphs 7-11 hold that income includes losses and that penalty could apply between 1 April 1976 and 1 April 2003 even when addition of concealed income merely reduced the returned loss. Paragraph 17 expressly says Virtual Soft's contrary view is incorrect and holds Explanation 4 clarificatory, not substantive. This is direct overruling of the principal rule, not merely a different factual result (Gold Coin, physical 9-11 and 17/SCR 187-189, 195).

Gold Coin's paragraph 12 separately identifies the law at the date of filing the return as relevant to penalty and notes that a returned loss may include carried-forward losses. Its paragraphs 18-19 record Revenue's concessions not to demand penalties in its two particular appeals and dispose of those appeals; those concessions do not preserve Virtual Soft's rule or extend a waiver to everyone. The present check does not establish any order reopening these nine concluded Virtual Soft appeals.

For version control, the retained 2011 compilation identifies the 1976 substitution as the Taxation Laws (Amendment) Act, 1975, matching Virtual Soft paragraph 21 despite repeated Finance Act, 1975 labels elsewhere. Its footnotes show the three-times ceiling came from the 1989 amendment, whereas the tax-if-any wording and substituted Explanation 4(a) came from the Finance Act, 2002 with a stated 1 April 2003 commencement. Do not infer that every difference between the Court's composite historical quotations was introduced in 2002 (DOR physical 952 and 954). This is selected historical compilation evidence, not original Gazette authentication.

For a live penalty file, identify the applicable return date, statutory version, alleged concealment or inaccurate particulars, and computation independently. Neither the original loss exemption nor an automatic penalty for every disallowance follows from this note. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not _verified.

Source: [bounded later direct treatment / paragraphs Three-judge identity; paragraphs 2, 6-12, 17-19 / PDF pages 1, 6, 9, 10, 11, 12, 17 / judicial text; historical statutory compilation / paragraphs Selected section 271 and footnotes 96,98,99,13 / PDF pages 952, 954 / historical statutory compilation](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 7115 of 2005 / Civil Appeal No. 345 of 2006 / Civil Appeal No. 1340 of 2006 / Civil Appeal No. 3390 of 2006 / Civil Appeal No. 5219 of 2006 / Civil Appeal No. 5221 of 2006 / Civil Appeal No. 5220 of 2006 / Civil Appeal No. 5218 of 2006 / Civil Appeal No. 4367 of 2006

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 7115 of 2005

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

2.

Case number: Civil Appeal No. 345 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

3.

Case number: Civil Appeal No. 1340 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

4.

Case number: Civil Appeal No. 3390 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

5.

Case number: Civil Appeal No. 5219 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

6.

Case number: Civil Appeal No. 5221 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

7.

Case number: Civil Appeal No. 5220 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

8.

Case number: Civil Appeal No. 5218 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

9.

Case number: Civil Appeal No. 4367 of 2006

Outcome: Allowed under the common paragraphs 59-60; impugned judgment set aside; no individual further direction stated

Costs: No express costs direction in the final judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Actual section 271 concealment-penalty dispute after reassessment still left the lead assessee with a loss; section 260A supplied the High Court route. The distinct 2018 Virtual Soft leasing judgment is not this case.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Ashok Bhan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Case: Commissioner of Income Tax-I, Ahmedabad v. Gold Coin Health Food Pvt. Ltd.

Decision date: 2008-08-18

Relationship: direct larger bench overruling of principal rule

Result: Paragraphs 10-11 permit penalty on reduction of a returned loss in the 1976-2003 period; paragraph 17 holds the amendment clarificatory and Virtual Soft's contrary view incorrect. Particular no-demand concessions in paragraph 18 are preserved.

Source pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12; 17

Paragraphs: Paragraphs 6-12 and 17-19

Source role: judicial text

Limit: Full bounded later judicial opinion read, but no comprehensive citator/current-law or reopening analysis.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Taxation Laws (Amendment) Act, 1975, effective 1 April 1976; Finance Act, 2002 amendments stated effective 1 April 2003; Section 143(1A), comparison only; Section 68, narrated assessment addition only; Article 20(1), historical reasoning, not a separate invalidation of an enactment

SOURCE & VERIFICATION

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

Identified source rendition: 26 PDF pages; SHA-256
ad87a41535982faa1b586ad42244437629f067101c10321c398d57665d67e0bf. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: False; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

Printed SCR heading, date, bench and proceedings checked against primary material images. Frozen catalogue INSC identifier not independently authenticated in this rendition.

The nil return with unabsorbed depreciation in paragraph 6 must not be rewritten as a simple ordinary business-loss return; the Court thereafter frames the issue as a returned loss remaining a reduced loss.; The assessed loss is printed Rs. 11,02,255 in paragraph 7/7(viii), but Rs. 11,02,225 in paragraph 8; intermediate depreciation totals and subtraction signs also vary. No repaired arithmetic or revised assessment is invented.; The penalty order is dated nil September 2002. The assessee's separate ITA number is blank. The eight companion appeals are listed but no individual facts or years are supplied.; Prithipal Singh is described as AY 1971-72 in paragraph 9 but 1970-71 in paragraphs 11 and 30; paragraph 3 prints Civil Appeal 1961/1996 while Gold Coin prints 7961/1996. Those cited-case discrepancies are not assigned to the present AY 1996-97.; The report repeatedly says Finance Act, 1975, but paragraph 21 identifies Taxation Laws (Amendment) Act, 1975; DOR historical footnote 96 supports the latter. Paragraph 38 prints Finance Act, 1992 beside a 1 April 2003 amendment; the surrounding discussion repeatedly identifies Finance Act, 2002.; Historical section quotations do not provide a complete intervening amendment history. The three-times cap is not attributed to the 2002 Act; the old twice quotation is not certified as the full text operative for AY 1996-97.; Paragraph 58(b) describes Brij Mohan as supporting the first day of the accounting period. Gold Coin paragraph 12 instead states the return-filing-date rule for penalty; no independent approval of Virtual Soft's paraphrase is claimed.; Gold Coin's editorial held-inapplicable label is narrower than its judicial paragraph 17; this note follows the larger Bench's express rejection of the contrary rule. Original bytes remain unchanged.; Earlier authorities, assessment orders and the original amending Gazettes were not separately authenticated unless listed. Gold Coin and DOR checks are bounded, not a complete citator or current-law certificate.

AY 1996-97 is the narrated lead appeal; AY 1995-96 appears as brought-forward unabsorbed depreciation. No separate assessment years for the eight companions are supplied.

One common judgment in all nine appeals. Main appeal from Delhi High Court judgment dated 29 July 2005 in ITA 340/2004. The assessee's separate High Court appeal number is left blank in paragraph 3; no number or separate outcome is invented.

STATUTORY SCOPE

No Income-tax Act, 2025 crosswalk or automatic carryover. Complete statutory amendment history, commencement, savings and present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. Only the specific later-source checks below are verified. Comprehensive later treatment, present applicability and 2025 mapping remain not_verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 26](#)

SHA-256: ad87a41535982faa1b586ad42244437629f067101c10321c398d57665d67e0bf

[bounded later direct treatment - PDF pages: 17](#)

SHA-256: aa922072d8097308eef6c2b6ebd6cff2427d188541c4eed49800396bbe70f1b3

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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