

Commissioner of Income Tax, New Delhi v. Oriental Fire & General Insurance Co. Ltd.

Civil Appeal No. 2741 of 2007 / Civil Appeal No. 2742 of 2007 / Civil Appeal No. 2743 of 2007 / Civil Appeal No. 2744 of 2007 / Civil Appeal No. 2745 of 2007

[2007] 7 SCR 462 | 2007-05-18

Could the Assessing Officer add back the tax provision/tax-related amounts and reserve for bad and doubtful debts to the annual-account balance under the old section 44/First Schedule rule 5(a) regime?

44 | First Schedule rule 5(a) | 40(a)(ii) | 36(1)(vii) | 256

Two judges | S.B. Sinha, J. | Markandey Katju, J.

Assessment years: 1974-75, 1975-76, 1978-79

Assessee won under old rule 5(a); later statutory wording differs

The judicial body dismisses Revenue's five appeals and rejects the historical add-backs, despite the opening headnote's contrary deduction shorthand. The years are 1974-75, 1975-76 and 1978-79. Later rule 5(a) expressly included tax/dividend/reserve provisions from 1 April 1989, and the profit starting point changed from 1 April 2011, as recorded in the selected 2011 compilation. The 2013 Delhi High Court application expressly confines its years to the pre-1989 version. This is not a general deduction for income tax or a current-law exemption for all reserves. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified.

01 FACTS OF THE CASE

Oriental Fire & General Insurance was a wholly Government-owned subsidiary of General Insurance Corporation engaged in general insurance. Its returns for AYs 1974-75, 1975-76 and 1978-79 were based on the annual accounts furnished to the Controller of Insurance under the Insurance Act, 1938. The proceedings concerned the special computation system under section 44 of the Income-tax Act, 1961 and rule 5 of its First Schedule (physical 4-6/SCR 465-467, paragraphs 2-10).

The report narrates disallowances relating to taxation provisions, a reserve for bad and doubtful debts, and entertainment allowance; appellate orders were made by the Commissioner and Tribunal. Its compressed history says the Tribunal accepted deductions, but the first reproduced reference question separately states that the Tribunal had confirmed adding Rs. 76,74,713 tax deducted at source and Rs. 6,57,00,000 provision for taxation, totalling Rs. 7,33,74,713. That question was referred at the assessee's instance for AY 1974-75. The second, referred at Revenue's instance for the same year, asked whether the bad-and-doubtful-debt reserve could be added to the annual-account profit (physical 5, paragraphs 3-5). The note preserves these descriptions without reconstructing an unstated intermediate order.

The Delhi High Court answered in favour of the assessee and against Revenue. Revenue brought five appeals to the Supreme Court. Entertainment allowance was expressly outside the question before the Court. Revenue relied on the commercial distinction between provision and reserve and on the proposition that tax was not expenditure; the assessee supported the High Court (physical 5-6, paragraphs 6-9).

Source: [reported judgment / paragraphs Paragraphs 2-9; actual years, reference questions and submissions / PDF pages 4, 5, 6 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 44's overriding language prescribed a special method for insurance-business profits. In the version reproduced by the Court, non-life insurance profit began with the balance in the annual accounts furnished to the Controller; rule 5(a) allowed adding back expenditure or allowance inadmissible under sections 30 to 43A. The insurance statute's audited-accounting and regulatory controls explained why the tax authority had a limited adjustment power rather than an unrestricted power to recast those accounts (physical 6-8/SCR 467-469, paragraphs 10-17).

The Court accepted the distinction between a provision as a charge against profits and a reserve as an appropriation, relying on Vazir Sultan. It distinguished State Bank of Patiala as a fact-specific Companies (Profits) Surtax Act case. Although paragraph 21 recites old bad-debt conditions, paragraph 22 says it is unnecessary to pursue that issue because the authorities and High Court had kept the provision/reserve distinction in view; a provision may represent a liability without being expenditure (physical 8-11/SCR 469-472, paragraphs 18-22).

The decisive tax point was the limited statutory add-back gateway. Drawing on the authorities reproduced in paragraphs 23-27, the Court reasoned that income tax is a charge on profits after they are determined, rather than expenditure incurred to earn them. Paragraph 26 therefore held that the Assessing Officer could not exercise the asserted adjustment jurisdiction over the tax provision. The quotation from General Insurance Corporation stressed the absence of a general power to correct compliant insurance accounts (physical 11-13/SCR 472-474, paragraphs 23-27).

Section 40(a)(ii) did not itself convert income tax into expenditure, and the Court held it inapplicable to the case. Likewise, the bad-and-doubtful-claims item was not expenditure for the asserted adjustment; section 36(1)(vii) did not supply a basis to override the special section 44 computation. These conclusions defeated Revenue's appeals under the old wording. They do not mean that income tax became an ordinary deductible business expense or that no adjustment could ever be made to insurance accounts (physical 13, paragraphs 28-30).

Source: [reported judgment / paragraphs Paragraphs 10-29; SCR 467-474 / PDF pages 6, 7, 8, 9, 10, 11, 12, 13 / judicial text](#)

03 JUDICIAL DECISION

All five Revenue appeals were dismissed with costs. Counsel's fee was assessed at Rs. 10,000 in each case. The assessee-favouring High Court result stood; no remand or fresh quantified demand was ordered (physical 13/SCR 474 E, paragraph 30). The reporter's opening headnote says the items were not expenditure and hence deductions were unavailable, but the judicial body rejects the asserted add-backs and dismisses Revenue's appeals; the body and operative order control this note.

Source: [reported judgment / paragraphs Paragraph 30; SCR 474 E / PDF pages 13 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, against Revenue's asserted add-backs under the historical insurance-computation regime

Civil Appeals 2741-2745/2007 dismissed with costs; counsel's fee Rs. 10,000 in each case

Final substantive computation/adjustment ruling under old section 44 and First Schedule rule 5(a)

No entertainment-allowance ruling; no general income-tax expense deduction; no unrestricted immunity for insurance accounts; no application of this old wording to later years without checking amendments.

Source: [reported judgment / paragraphs Five-appeal recital; paragraph 30 costs and dismissal / PDF pages 4, 13 / judicial text](#)

05 AKHB REVIEW POINT

Identify the statutory adjustment power before applying an ordinary disallowance provision. This judgment concerns the wording that governed the narrated 1970s assessments. The fact that an item is not ordinary expenditure did not give the Assessing Officer a free-standing power to add it back under that old rule. Keep the tax-related accounts, the bad-debt reserve, and the expressly excluded entertainment allowance separate.

The retained 2011 compilation records material changes that prevent simple carryover. Rule 5(a) by then expressly included amounts debited by way of provision for tax, dividend, reserve or a prescribed provision; footnote 52 attributes that insertion to the Finance (No. 2) Act, 1998 with retrospective effect from 1 April 1989. Footnote 53 records the change in the referenced range from sections 30-43A to 30-43B from 1 April 1989. Footnote 51 records that the profit starting point was changed to profit before tax and appropriations by the Finance (No. 2) Act, 2009 from 1 April 2011 (physical 1007-1008, printed 1.966-1.967). These are selected historical compilation checks, not authentication of the amending Gazettes or present statutory text.

Nor should paragraph 21's old bad-debt discussion be turned into a present general requirement to prove actual irrecoverability. The independently read T.R.F. orders of 9 February 2010 distinguish the pre- and post-1 April 1989 versions of section 36(1)(vii), retain the section 36(2) qualification in the quoted text, and explain that the later rule requires the actual write-off. They remand only to examine that write-off (physical 1-4). T.R.F. is a related statutory comparison, not direct treatment of this insurance judgment or authority that a mere reserve always suffices.

A bounded direct later application strengthens the period limit. In *The Oriental Insurance Co. Ltd. v. CIT*, Delhi High Court, 17 January 2013, ITR Nos. 113-117/1998, paragraphs 7 and 10 apply this Supreme Court judgment to tax deducted at source, tax provisions and the bad/doubtful-debt reserve for AYs 1980-81 and 1981-82. Paragraph 15 expressly confines the cases to years before 1 April 1989 and quotes the later provision/tax/dividend/reserve language. The later judgment has mixed outcomes on other questions: weighted export deduction and guest-house expenses went against the assessee, while the distinct export-market-development reserve issue was answered in its favour. That is a separate five-reference decision, not a new Supreme Court holding or a clearance for later years (physical 33-35/printed 2116-2120, paragraphs 1-16).

The similar-name Oriental Insurance decision of 18 July 2008 concerns Committee on Disputes clearance in a different eleven-appeal group; it is not a computation ruling or shown to be a continuation of these five appeals. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified.

Source: [reported judgment / paragraphs Paragraphs 10-14, 21-22, 26-30 / PDF pages 6, 7, 8, 10, 11, 12, 13 / judicial text](#); [historical statutory compilation / paragraphs First Schedule rule 5 and footnotes 51-54 / PDF pages 1007, 1008 / historical statutory compilation](#); [bounded later statutory comparison / paragraphs Two unnumbered orders](#); [statutory version and limited write-off remand / PDF pages 1, 2, 3, 4 / bounded later](#)

05 AKHB REVIEW POINT

statutory comparison; bounded later direct treatment / paragraphs Paragraphs 1-16, especially 7,10,15; printed 2116-2120 / PDF pages 33, 34, 35 / bounded later direct treatment

DETAILED DISPOSITION AND CONNECTED GROUPS**Proceeding outcomes****1.****Case number:** Civil Appeal No. 2741 of 2007**Outcome:** Revenue appeal dismissed with costs; counsel's fee assessed at Rs. 10,000 in this case**2.****Case number:** Civil Appeal No. 2742 of 2007**Outcome:** Revenue appeal dismissed with costs; counsel's fee assessed at Rs. 10,000 in this case**3.****Case number:** Civil Appeal No. 2743 of 2007**Outcome:** Revenue appeal dismissed with costs; counsel's fee assessed at Rs. 10,000 in this case**4.****Case number:** Civil Appeal No. 2744 of 2007**Outcome:** Revenue appeal dismissed with costs; counsel's fee assessed at Rs. 10,000 in this case**5.****Case number:** Civil Appeal No. 2745 of 2007**Outcome:** Revenue appeal dismissed with costs; counsel's fee assessed at Rs. 10,000 in this case**Costs:** Costs awarded; counsel's fee Rs. 10,000 in each of the five appeals**ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS**

Actual general-insurance tax computation under section 44 and the old First Schedule rule 5(a), rather than a dispute governed solely by insurance regulation.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.B. Sinha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS**1.****Case:** T.R.F. Limited v. Commissioner of Income Tax, Ranchi**Decision date:** 2010-02-09**Relationship:** later related statutory comparison not direct treatment

Result: Post-1 April 1989 section 36(1)(vii) requires actual write-off rather than separate proof of irrecoverability; quoted provision remains subject to section 36(2). Limited remand to verify write-off; no automatic approval of reserves.

Source pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3; 4

Paragraphs: Two unnumbered orders

Source role: judicial text

Limit: Not a named citation or overruling of Oriental Fire; not a full insurance-law citator.

2.

Case: The Oriental Insurance Co. Ltd. v. CIT

Court: Delhi High Court

Decision date: 2013-01-17

Relationship: direct later application with pre 1989 statutory limit

Result: Paragraphs 7 and 10 follow Oriental Fire for tax/TDS provisions and bad/doubtful debts; paragraph 15 makes pre-1 April 1989 version limit explicit. Mixed unrelated questions are not collapsed into a complete assessee victory.

Source pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 33; 34; 35

Paragraphs: Paragraphs 1-16, especially 7,10,15; printed 2116-2120

Source role: bounded later direct treatment

Limit: Entire bounded judgment read within 247-page official ILR compilation; other volume judgments excluded. No comprehensive citator or present-law certification.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Insurance Act, 1938, section 11 and insurance-accounting controls; Companies (Profits) Surtax Act, 1964, distinguished precedent only

SOURCE & VERIFICATION

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

Identified source rendition: 13 PDF pages; SHA-256
8869d4c1d4a4d5eb95ca7078539d7102558bafeb2f91c33d1ac58fd0ed41e4f9. 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 editorial first-page headnote says deductions are unavailable, while judicial paragraphs 26-30 reject Revenue's asserted adjustment power and dismiss its appeals. The note follows the judicial reasoning and order; the original is not altered.; Paragraphs 3-4 broadly describe deductions being accepted, while paragraph 5's first reference question describes Tribunal-confirmed tax add-backs challenged by the assessee. The intermediate procedural account is preserved, not silently harmonized.; Paragraph 13 prints Section 10 of the 1961 Act as ordinary business computation; this apparent cross-statute/section miscitation is not used to create a section 10 holding. Paragraph 16 also loosely describes an older insurance precedent by reference to the 1961 Act; that older case's statute has not independently been recharacterized here.; The reproduced old rule uses sections 30-43A and a Controller-account starting point. Later provision/reserve language, the 43B range and the profit-before-tax starting point must not be read backwards into the 1970s years.; The tax reference question includes TDS and provision-for-tax figures, while the reasoning mainly addresses the tax provision as a liability; no separate TDS-credit entitlement or numerical refund is invented.; Five appeals but only three narrated years; no unsupplied year-to-appeal or company-successor mapping is inferred. Entertainment allowance was expressly not before the Supreme Court.; T.R.F. is a bounded later section 36 comparison, not a named overruling of Oriental Fire. DOR is a selected 2011 historical compilation; complete later treatment and original amending Gazettes remain unverified.; The 2013 Delhi High Court source is a 247-page official ILR compilation. Only the complete Oriental Insurance opinion on physical 33 right through 35 right, and its heading/editorial material from physical 32 right, are within this read. Adjacent service-tax text and other judgments are excluded. It calls the Supreme Court authority the assessee's own case, but its five references remain separate proceedings from both Supreme Court appeal groups reviewed here.

All three years expressly listed in paragraph 2; the two reproduced section 256 questions expressly concern AY 1974-75. No unsupported allocation among the five appeals is made.

Five appeals disposed of together. Main appeal from Delhi High Court judgment dated 27 May 2004 in ITR Nos. 144-146/1984; no separate year-to-appeal mapping is supplied.

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: 13](#)

SHA-256: 8869d4c1d4a4d5eb95ca7078539d7102558bafeb2f91c33d1ac58fd0ed41e4f9

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[bounded later statutory comparison - PDF pages: 4](#)

SHA-256: 4cdc70d07a41e532cfffcd738f06bb9623a6e0fb8dc60ba7c0abbec1c882083ad

[bounded later direct treatment - PDF pages: 247](#)

SHA-256: cdf8a665a999c9a9db2fc1d8a8001386668c5c878e3f6108940af7b79a513d31

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