

Commissioner of Income Tax, Udaipur, Rajasthan v. McDowell & Co. Ltd.

Civil Appeal No. 2939 of 2006 / Civil Appeal No. 3471 of 2007 / Civil Appeal No. 3472 of 2007 / Civil Appeal No. 3473 of 2007 / Civil Appeal No. 3511 of 2007 / Civil Appeal No. 3512 of 2007

[2009] 8 SCR 983 | 2009-05-08

Whether a bank guarantee met section 43B's payment requirement, whether this Rajasthan bottling charge and associated late-payment-interest controversy fell within that section, and how the connected depreciation, replacement-transformer and technical-service claims should be disposed of.

43B | 35(1)(iv) | 31 | 37 | 139(1)

Two-judge bench | Dr. Arijit Pasayat, J. | Dr. Mukundakam Sharma, J.

Assessment years: 1988-89, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96

Contractual fee classification; mixed remands and source-number warning

A bank guarantee is not actual payment under section 43B. The assessee's fee result instead turns on this charge being contractual bottling-privilege consideration; do not extend it to every excise levy or interest liability. The six-appeal report includes final answers and factual remands, not a blanket allowance of asset deductions. It repeats an opening appeal number, contains a conflicting year cross-reference and misdates its statutory quotation. Preserve the issue-by-issue disposition map. Current law and comprehensive later treatment remain unverified.

01 FACTS OF THE CASE

The report contains six related Revenue appeals decided on 8 May 2009. The recurring dispute concerned unpaid bottling charges under the Rajasthan Excise Act, 1950 and its Rules, secured by bank guarantees, with late-payment interest included in the framed question. The High Court rejected the view that a bank guarantee was payment but held that the charge was consideration for the State's bottling privilege rather than a levy within section 43B. The opening unit concerns AY 1988-89; its separate landscaping issue had already become final in Revenue's favour (opening unit paragraphs 1-7).

Other years raised depreciation on R&D machinery associated with a closed fast-food unit, with the assessee maintaining that the machinery also served the liquor unit; replacement-transformer expenditure while the old transformer remained in the asset block; and technical-service charges under a new April 1992 agreement, although Revenue relied on the continuing terms of the earlier December 1990 agreement. The Court addressed those questions in separately numbered appeal units, with different final and remand outcomes.

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

02 DISCUSSION BY THE HON'BLE COURT

A bank guarantee is contingent security for payment, not actual payment. Where section 43B applies, the guarantee does not itself meet the statutory condition. That answer did not determine the bottling-charge claim: the Court separately examined whether the liability was of a kind governed by the provision (opening unit paragraph 8).

Reading tax, duty, cess and fee with the accompanying general words, the Court distinguished compulsory exactions under the State's taxing power from contractual consideration. The particular charge under the Excise Act and Rule 69 was the price for acquiring the exclusive bottling privilege. It was not a tax or fee in the relevant technical sense, and the High Court was right that section 43B did not apply. This was a classification of the charge in issue, not an exemption for every amount collected under excise legislation. Late-payment interest was part of the framed controversy, but the Court did not develop a freestanding rule excluding all interest liabilities from section 43B (opening unit paragraphs 8–17).

For R&D machinery, the unresolved fact was whether it served only the closed fast-food unit or also the liquor unit. The Assessing Officer was to examine the evidence; any allowance depended on established use and what the law otherwise permitted. For transformers, the actual nature of the transaction and expenditure had not been sufficiently examined. The Court remitted that question for consideration against Saravana Spinning Mills and Ramaraju Surgical Cotton Mills rather than deciding the capital/revenue character itself (CA 3511/2007 paragraphs 5–8; CA 2939/2006 paragraphs 3–7).

The Revenue's technical-service challenge failed for AYs 1993-94 and 1994-95. The Tribunal and High Court had found genuine commercial reasons for the new agreement, not a tax-reduction device; later-year comparisons supported the business decision. The Supreme Court declined to disturb those fact-based findings. It did not formulate a rule that every higher-rate replacement agreement is deductible (CA 3473/2007 paragraph 4; CA 3512/2007 paragraph 5).

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

03 JUDICIAL DECISION

The opening AY 1988-89 Revenue appeal was dismissed. The other five appeals were disposed of with the common section 43B question answered against Revenue, while the machinery-use and transformer matters were sent to the Assessing Officer to the extent directed or incorporated for the relevant appeal. Revenue's technical-service challenges for AYs 1993-94 and 1994-95 failed. This is a mixed merits-and-remand group, not an outright Revenue loss on every deduction. The reported orders make no express costs direction.

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on the particular section 43B classification and technical-service issues; mixed/procedural on the asset issues

Opening AY 1988-89 appeal dismissed; five connected appeals disposed of with issue-specific remands and merits findings as mapped below

Final within the group on the identified bottling-charge section 43B question and the two technical-service challenges; R&D machinery use and transformer expenditure remain for factual adjudication. Bank guarantee is expressly not actual payment. The opening landscaping finding in Revenue's favour was already final.

No blanket exclusion of excise liabilities or interest from section 43B; no final allowance of all machinery/transformer claims and no fresh general section 35 research-deduction rule. The 2009 fee group is distinct from the later McDowell amalgamation litigation.

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

05 AKHB REVIEW POINT

Use a two-stage analysis: first classify the liability under the applicable statute and contract, then ask whether any applicable actual-payment condition is met. The assessee succeeded here because the particular privilege consideration fell outside section 43B, not because its bank guarantee counted as cash payment. The interest reference and the opening narration about duty on transit wastage must not be expanded into an exclusion of statutory excise duty or all interest.

Keep the remands separate from the final answers. Machinery-use evidence remained necessary, and transformer replacement was not finally classified as deductible revenue expenditure. The technical-service result depended on the actual commercial findings.

The reproduced statutory block is labelled as at 1 April 1989 but includes later clauses. The Department's version labelled 2001 confirms that scheduled-bank clause (e) was inserted from 1 April 1997 and leave-encashment clause (f) from 1 April 2002. This bounded check exposes a dating problem in the quotation; it is not a full amendment-history or present-law audit.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, six-number report list and opening issues

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3; 4

Paragraphs: Cover; jurisdiction list; opening unit 1–7

Source role: reported metadata and judicial text

2.

Topic: Bank guarantee, charge character and quoted statute

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7

Paragraphs: Opening unit 8–11

Source role: judicial text

3.

Topic: Tax-versus-contract reasoning and opening dismissal

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: Opening unit 12–18

Source role: judicial text

4.

Topic: 1991-92 R&D machinery factual remand

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: CA 3511/2007, 1–8

Source role: judicial text

5.

Topic: 1992-93 transformer and incorporated machinery remands

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13

Paragraphs: CA 2939/2006, 1–7

Source role: judicial text

6.

Topic: 1993-94 incorporated answers and technical-service challenge

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15; 16; 17

Paragraphs: CA 3473/2007, 1–5

Source role: judicial text

7.

Topic: 1995-96 fee decision and factual remand

Source url: [Open cited source](#)

Pdf pages: 17; 18; 19

Paragraphs: CA 3472/2007, 1–6

Source role: judicial text

8.

Topic: 1994-95 incorporated answers and technical-service challenge

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21

Paragraphs: CA 3512/2007, 1-6

Source role: judicial text

9.

Topic: Bounded historical quotation-date check

Source url: [Open cited source](#)

Locator: Year 2001; clause (e), proposed clause (f); footnotes 47, 52; express clause (f) insertion date

Source role: official statutory html

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

43b: Live distinction between actual payment and bank security, and between the particular contractual bottling consideration and a tax/duty/cess/fee; clause (a) is central

35(1)(iv): Landscaping/R&D expense questions in the reported proceedings; not a new universal allowance for research expenditure

31 / 37: Rival current-repairs/revenue-expenditure characterisations of replacement-transformer expenditure; factual remand, not final deductibility

139(1): Return due date appears in framed actual-payment questions; no independent return-deadline ruling

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Dr. Arijit Pasayat, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

INDIVIDUAL APPEAL-GROUP DISPOSITIONS AND SOURCE-NUMBER CAUTIONS

1.

Appeal: Opening unit, cross-identified as Civil Appeal No. 3471 of 2007

Assessment year: 1988-89

Pdf pages: 3; 4; 5; 6; 7; 8; 9

Paragraphs: 1-18

Result: Revenue appeal dismissed. Particular section 43B challenge fails; bank guarantee is not actual payment. Landscaping issue already final for Revenue.

Source identity caution: Opening cover/jurisdiction instead prints CA 2939/2006; CA 3511/2007 paragraph 4 and CA 3472/2007 paragraph 4 identify the 1988-89 decision as CA 3471/2007. No independently verified corrected order number is asserted.

2.

Appeal: Civil Appeal No. 3511 of 2007

Assessment year: 1991-92

Pdf pages: 10; 11

Paragraphs: 1-8

Result: Disposed of: section 43B answer against Revenue; R&D machinery-use issue remitted to Assessing Officer, with evidence permitted and allowance only as permissible in law.

3.

Appeal: Civil Appeal No. 2939 of 2006

Assessment year: 1992-93

Pdf pages: 11; 12; 13

Paragraphs: 1-7

Result: Disposed of: first two issues follow CA 3511/2007; transformer-expenditure question additionally remitted for factual examination under the cited authorities.

4.

Appeal: Civil Appeal No. 3473 of 2007

Assessment year: 1993-94

Pdf pages: 13; 14; 15; 16; 17

Paragraphs: 1-5

Result: Disposed of: earlier answers on section 43B, R&D machinery and transformers incorporated; Revenue's additional technical-service challenge fails.

Source identity caution: Paragraph 4 calls CA 3511/2007 a 1992-93 matter, contrary to its own unit's express 1991-92 identification. Listed R&D questions do not receive a separate new general section 35 holding.

5.

Appeal: Civil Appeal No. 3472 of 2007

Assessment year: 1995-96

Pdf pages: 17; 18; 19

Paragraphs: 1-6

Result: Disposed of: section 43B issue expressly in assessee's favour; a similar factual remand directed for the remaining asset issue, following the earlier units.

6.

Appeal: Civil Appeal No. 3512 of 2007

Assessment year: 1994-95

Pdf pages: 19; 20; 21

Paragraphs: 1-6

Result: Disposed of: earlier answers on section 43B, R&D machinery and transformers incorporated; Revenue's technical-service challenge fails.

SPECIFIED COMPARISONS AND VERIFICATION LIMITS

1.

Kind: historical statutory version check

Source url: [Open cited source](#)

Locator: Published year 2001; clause (e), proposed clause (f), footnote 52 and the explicit 1 April 2002 insertion statement

Finding: The quoted 1989 block includes provisions introduced later. This check is limited to that dating discrepancy.

Limits: Not subsequent judicial treatment, not a present consolidated-law audit, and not a 2025-Act mapping.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 21 PDF pages; SHA-256

76f4e71a90c1db22d681da973ac986ff4f22659354c9e7cf99736ed8fcbe3542. Original bytes preserved.

All six connected judicial units on physical pages 3–21 (SCR 985–1003): opening AY 1988-89 unit paragraphs 1–18 (pages 3–9); CA 3511/2007 paragraphs 1–8 (10–11); CA 2939/2006 paragraphs 1–7 (11–13); CA 3473/2007 paragraphs 1–5 (13–17); CA 3472/2007 paragraphs 1–6 (17–19); CA 3512/2007 paragraphs 1–6 (19–21). Pages 1–2 and the top of 3 are editorial/report material. These are six related dispositions, not one undifferentiated appeal or an unrelated adjacent case. Opening-number discrepancy retained.

Open cited source rendition

The six reported units identify these years. The opening AY 1988-89 unit is identified by companion cross-references as CA 3471/2007, although the report's opening jurisdiction line says CA 2939/2006, which is repeated for the separate AY 1992-93 unit. The map below preserves that discrepancy. AY 1996-97 appears only as a royalty comparison, not an additional appeal decided here.

The report is an appeal group with six separately reasoned units and paragraph numbering restarts. Always identify the unit with a paragraph reference; do not read the final singular disposal as the result of every earlier unit.; The opening jurisdiction line and the AY 1992-93 unit both print CA 2939/2006. Companion units identify the AY 1988-89 judgment as CA 3471/2007. This note preserves the report title and lists all six numbers while flagging the opening conflict.; CA 3473/2007 paragraph 4 incorrectly associates CA 3511/2007 with AY 1992-93; the latter's own paragraph 2 states 1991-92. The assessment map uses each unit's own express year and records the cross-reference conflict.; The opening paragraph 5 narrates excise duty on transit wastages, while the framed questions and dispositive analysis address contractual bottling consideration. Do not convert this narration into a ruling excluding excise duty generally.; The bank-guarantee headnote must be read with the judicial distinction between actual payment and whether section 43B applies at all. The late-interest issue receives no standalone general interest analysis.; Paragraph 9 labels the full statutory quotation as at 1 April 1989 although it contains later clauses; the official historical-version check is separately identified.; OCR on physical page 15 rendered the repeated R&D amount as Rs.16,69,743; visual inspection reads Rs.6,69,743. No fresh quantum computation is attempted. The narration of later royalty costs is comparative evidence, not an additional decided assessment year.

STATUTORY SCOPE

Current statutory equivalence and 2025 Act applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment is not verified. Any actually checked statutory comparison is identified separately and does not certify current law or a 2025-Act counterpart.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 21

SHA-256: 76f4e71a90c1db22d681da973ac986ff4f22659354c9e7cf99736ed8fcbe3542

official statutory html

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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