

## M/s. Shasun Chemicals and Drugs Ltd. v. Commissioner of Income Tax-II, Chennai

Civil Appeal No. 9611 of 2016 / Civil Appeal No. 9612 of 2016

[2016] 8 SCR 73 | 2016-09-16

**Whether share-issue expenditure already accepted under the historical ten-year section 35D scheme could be disallowed for the appealed years, and whether timely bonus paid to employees through a trust was barred by section 40A(9) or section 43B.**

35D | 36(1)(ii) | 40A(9) | 43B(b) | 43B(c)

Two-judge bench | A. K. Sikri, J. | N. V. Ramana, J.

Assessment years: 1999-2000, 2001-02

### Historical amortisation; actual bonus payment required

The one-tenth/ten-year section 35D block is the historical regime for this expenditure. The bonus was actually paid to workers on the next day after the trust deposit and within time. This is not authority for deduction on a trust deposit alone, a blanket exclusion of bonus from section 43B, or the current duration of section 35D.

### 01 FACTS OF THE CASE

The assessee manufactured bulk drugs and intermediates. It issued 15,10,000 shares of Rs. 10 at a Rs. 30 premium to fund expansion of existing Pondicherry and Cuddalore production facilities and research and development. It incurred share-issue expenses of Rs. 45,51,890 and claimed one-tenth annually under section 35D for AYs 1995-96 to 2004-05. The first claim was allowed. After initially refusing the second, the Assessing Officer physically verified the factory on appellate directions, found the expansion proved and allowed AY 1996-97; Revenue did not appeal that allowance. Later disallowances relied on the capital nature of the share issue. The appeals before the Supreme Court concerned AYs 1999-2000 and 2001-02 (paragraphs 3-10).

On bonus, paragraph 11 records Rs. 96,08,002 paid in the financial year relevant to AY 2001-02. Workers had disputed the amount and initially refused it. The company deposited it with a trust; settlement followed and the workers received the bonus the next day, before the due date for deduction. The lower authorities disputed whether the trust route prevented allowance, despite payment reaching employees in time. The High Court ruled against the assessee on both issues (paragraphs 11 and 14).

Source: [reported judgment](#) / [paragraphs 3-11 and 14](#) / [PDF pages 4, 5, 6, 8](#) / [judicial text](#)

## 02 DISCUSSION BY THE HON'BLE COURT

For section 35D, the Court applied the historical text allowing one-tenth for ten successive years. Expansion and qualification of the same expenditure had been examined and accepted in the first two years, with the second allowance final. On those unchanged facts and provisions, the established ten-year sequence had to run through AY 2004-05. Reliance on the capital-expenditure character in Brook Bond did not answer this statutory amortisation claim (paragraphs 12-13).

For bonus, the Court distinguished a payment for employees under section 36(1)(ii) from an employer contribution to form or fund an institution within section 40A(9). On the facts, the trust was the route through which the employees received the bonus; section 40A(9) did not defeat the deduction. The reasons also distinguish fund contributions in section 43B(b). Crucially, paragraph 14 recognises the actual-payment requirement, paragraph 16 reproduces section 43B(c) referring to section 36(1)(ii), and paragraph 17 relies on undisputed payment to employees within the stipulated time. The result cannot responsibly be restated as excluding bonus altogether from section 43B (paragraphs 14-17).

Source: [reported judgment / paragraphs 12-17 / PDF pages 6, 7, 8, 9, 10, 11 / judicial text](#)

## 03 JUDICIAL DECISION

Both issues were answered for the assessee. The Court allowed the section 35D claims for the assessment years in appeal and the timely-paid bonus deduction under section 36(1)(ii). It set aside the High Court order on both counts and allowed Civil Appeal Nos. 9611 and 9612 of 2016 without costs; no fresh verification or remand was directed (paragraphs 13, 17-18).

Source: [reported judgment / paragraphs 13, 17-18 / PDF pages 8, 11 / judicial text](#)

## 04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Both appeals allowed; High Court order set aside on both counts; no costs

Final merits relief on section 35D and bonus deductions for the appealed assessment years

The section 35D result concerns this already accepted expenditure in the historical ten-year block. Bonus actually reached workers by the stipulated due date; a trust deposit alone or an unpaid liability is not the decided fact. No general present-day ten-year or section 43B exemption rule is certified.

Source: [reported judgment / paragraphs Both appeal numbers; 18 / PDF pages 3, 11 / judicial text](#)

**05 AKHB REVIEW POINT**

For an amortisation dispute, preserve the first-year allowance, the later factual verification, the finality of the qualifying-expenditure finding and the applicable historical statutory block. This case does not establish permanent immunity for every repeated claim or the present duration of section 35D.

For employee bonus, document both dates: payment into the intermediary and actual payment to the workers. The next-day disbursement within the statutory time is essential to this result. Read the broad section 43B language in paragraph 17 alongside paragraphs 14 and 16, including clause (c); do not turn a distinction concerning clause (b) fund contributions into a claim that unpaid bonus is deductible.

Source: [reported judgment / paragraphs 6-8, 12-17 / PDF pages 5, 6, 7, 8, 9, 10, 11 / judicial text](#)

**DETAILED DISPOSITION AND CONNECTED GROUPS****Issue results**

1.

**Issue:** Section 35D share-issue expense amortisation

**Result:** Allowance could not be denied in later years of the established ten-year block on the same facts and provision

**In whose favour:** Assessee

**Pinpoints**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 6; 7; 8

**Paragraphs:** 12-13

**Source role:** judicial text

2.

**Issue:** Bonus paid through the trust

**Result:** Section 36(1)(ii) deduction allowed; sections 40A(9) and 43B did not bar relief where workers received payment within time

**In whose favour:** Assessee

**Pinpoints**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 8; 9; 10; 11

**Paragraphs:** 14-18

**Source role:** judicial text

**ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS**

28; 35(2AB); 36(1)(iv); 36(1)(iva); 36(1)(v)

## JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A. K. Sikri, J.

## ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

## SOURCE & VERIFICATION

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

Identified source rendition: 11 PDF pages; SHA-256

2509383f9f8a85fd635e75838533e386c919a4ed78f2a58a85d10762f5ec4d6c. Original bytes preserved.

Judgment paragraphs 1-18 on physical pages 4-11 (SCR 76-83), fully read. Pages 1-3 are editorial headnote, references, jurisdiction and appearances. No adjacent judgment.

### Open cited source rendition

Paragraph 3 identifies the two appealed assessment years. The established section 35D series is AY 1995-96 to AY 2004-05; these contextual years are not all treated as appealed years. Paragraph 12 has the isolated 1994-95 inconsistency noted below.

The second issue is decided under section 36(1)(ii), with sections 40A(9) and 43B considered. Section 35(2AB) appears in the facts at paragraph 11 but is not the provision on which the Court grants bonus relief. Historical section 35D one-tenth/ten-year treatment is retained as such.

The primary source is the unchanged preserved reported rendition; public URL/hash provenance is cached acquisition evidence, not a newly retrieved signed original or live-URL check.; Paragraph 12 prints AY 1994-95, whereas paragraphs 5-6 and 13 repeatedly identify AY 1995-96 as the first year and AY 2004-05 as the end of the block. The isolated inconsistency is visually confirmed and is not silently used to change the established range.; Paragraph 11 prints section 35(2AB) for the bonus claim. Paragraphs 14-17 expressly frame and decide section 36(1)(ii); this note does not attribute a research-expenditure holding to the Court.; Paragraph 17 broadly says section 43B is not applicable while discussing clause (b). Paragraph 16 expressly reproduces clause (c), and paragraphs 14 and 17 confirm actual, timely employee payment. The note preserves those qualifications rather than publishing a general exemption from section 43B.; Paragraph 13 reports an argument that Brook Bond was rendered when section 35D was not on the statute book. This note relies on the Court's specific amortisation reasoning and established allowance, not that statement as independently verified legislative history.

## STATUTORY SCOPE

Historical Income-tax Act, 1961 provisions and assessment years only. No automatic mapping to the Income-tax Act, 2025.

## LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment or present-law audit has been performed. Any source-checked comparison is expressly bounded.

## IDENTIFIED SOURCE LINKS

### reported judgment - PDF pages: 11

SHA-256: 2509383f9f8a85fd635e75838533e386c919a4ed78f2a58a85d10762f5ec4d6c

**AI DISCLOSURE**

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