

M/s. Berger Paints India Ltd. v. C.I.T. Delhi-V

Civil Appeal No. 2162 of 2007 / Civil Appeal No. 2163 of 2007

[2017] 4 SCR 735 | 2017-03-28

Whether share premium could enlarge the capital-employed base for the preliminary-expenditure deduction ceiling under historical section 35D (3)(b) and Explanation(b).

35D (3)(b) and Explanation(b) | 35D (1)-(2), deduction structure and ceiling context

2-judge bench; one opinion | R.K. Agrawal, J. | Abhay Manohar Sapre, J.

Assessment years: 1996-97, 1997-98

IMPORTANT: HISTORICAL SECTION 35D CEILING AND LIMITED COMPANY-LAW COMPARISON

This judgment concerns AYs 1996-97 and 1997-98 and the historical 2.5% ceiling; it does not make share premium itself deductible or decide its taxability as income. The report also reproduces a later 5% proviso, which must not be imported into those years without the applicable expenditure-date rule. Section 78 of the 1956 Companies Act contains a limited capital-reduction fiction and permitted uses for its premium account; the judgment is not a universal rule that premium can never be treated like capital. This is a preserved eSCR-mirror report, not an independently authenticated signed original. Bounded historical checks do not certify present law. Comprehensive later treatment, current effectiveness and Income-tax Act 2025 mapping remain NOT VERIFIED.

01 FACTS OF THE CASE

Berger Paints manufactured and sold paints. For AY 1996-97 it returned total income of Rs 3,64,64,527, revised it to Rs 3,58,92,771 and then Rs 3,57,26,644. The report says the return was processed under section 143(1B) at Rs 3,63,03,128. These are successive income figures, not the disputed expense or a Supreme Court demand (paragraph 3, physical 2-3/SCR 736H-737B).

A section 143(2) notice questioned the Rs 7,03,306 preliminary-expense deduction described as 2.5% of capital employed. Berger included share premium in that base. The AO rejected the inclusion, allowed Rs 1,95,049 and disallowed Rs 5,08,257. CIT(A) accepted Berger's view that premium was shareholder-contributed capital and that the premium reserve formed part of its capital base. It deleted the disallowance. The Tribunal reversed CIT(A), holding that premium did not form capital employed for section 35D (paragraphs 4-8, physical 3-4/SCR 737B-738B).

Two appeals concerned Tribunal orders dated 26 April 2004 and 25 August 2004 in ITA 2307/Del/2000 for AY 1996-97 and ITA 1434/Del/2001 for AY 1997-98 respectively. Delhi High Court ITA 799/2004 and 797/2004 failed by orders dated 15 May 2006 under section 260A. Berger then brought CA 2162 and 2163/2007. The narrative specifies the above deduction figures in its 1996-97 account; it does not provide a separate 1997-98 quantum or justify duplicating those amounts across both years (paragraphs 1,9-10, physical 2/SCR 736F-G and physical 4/SCR 738C-D).

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

02 DISCUSSION BY THE HON'BLE COURT

Sapre J.'s single opinion treated the question as the statutory definition of capital employed for section 35D's ceiling, rather than whether premium economically supplies shareholder funds. The historical section 35D (3) ignored qualifying expenditure beyond 2.5% of project cost or, for an Indian company exercising the option, capital employed. Explanation(b) exhaustively enumerated issued share capital, debentures and long-term borrowings at the stated commencement/extension dates; the extension limb also required the relevant connection to the extension or new industrial unit (paragraphs 11,14-15, physical 4-5/SCR 738D-739F).

The Court adopted the High Court's reasoning. No one treated the premium as a debenture or long-term borrowing; Berger's case depended on calling it share capital. The accounts differentiated issued, subscribed and paid-up capital from reserves and surplus. The quoted share-capital number has irregular comma placement, Rs 7,88,19679 (digits normalised here as Rs 7,88,19,679); reserves and surplus of Rs 19,66,36,734 formed shareholders' funds but were not shown as issued, subscribed and paid-up capital. The report does not establish that every rupee of those reserves was premium, so the whole reserve figure is not recast as a proved premium receipt. Broader shareholder funds could not displace the exhaustive tax definition (paragraphs 16-18, physical 5-7/SCR 739G-741E).

The strongest contrary approach is CIT(A)'s acceptance of premium as capital contributed by shareholders, supported by its reserve-account position in the balance sheet. The Supreme Court rejected that economic/accounting route because Parliament had not included premium in Explanation(b). The point was textual omission in a defined ceiling base, not denial that premium adds resources to the company (paragraphs 7,19-20, physical 3/SCR 737F-H and physical 7/SCR 741F-H).

The Court contrasted CIT, West Bengal v. Allahabad Bank Ltd., (1969)2 SCC 143. There the Finance Act 1956 rebate definition expressly increased paid-up capital by cash premiums standing to the premium account's credit. The earlier Rs 45,50,000 premium and rebate issue belonged to Allahabad Bank, not Berger. Its favourable inclusion resulted from express statutory words absent in section 35D's definition; it did not supply an unstated enlargement here (paragraphs 20-22, physical 7-8/SCR 741H-742F).

As supporting company-law indicators, the Court accepted the Attorney General's points that the issued-share-capital break-up in the annual-return form under section 159/Schedule V Part II did not include premium, and section 78 required a separate securities-premium account. Paragraph 24's statement must be read in the context of the section 35D issue. A bounded independent read of the India Code-hosted 1956 Act compilation shows that section 78 applies capital-reduction provisions as if the premium account were paid-up capital, and permits specified uses including writing off preliminary expenses. Those limited rules are not an express expansion of Income-tax Act section 35D Explanation(b). The judgment does not establish that premium is never capital-like for any legal purpose, nor does permission to write off an expense automatically prove a tax deduction (paragraphs 23-24, physical

02 DISCUSSION BY THE HON'BLE COURT

8-9/SCR 742F-743B; separate statutory check identified below).

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

03 JUDICIAL DECISION

Both assessee appeals were dismissed. The Delhi High Court/Tribunal conclusion stood: premium on the subscribed issued share capital was excluded from the capital-employed base under section 35D (3)(b) and Explanation(b). The AO's restricted deduction, as described in the lead-year narrative, remained undisturbed. Paragraph 25 contains no express costs direction and no remand (physical 9/SCR 743C).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Both assessee appeals dismissed

Reasoned final merits determination; no remand

Capital-employed ceiling for section 35D preliminary expenditure, not taxation of share premium or universal company-law capital classification

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

05 AKHB REVIEW POINT

Keep the expense, ceiling base and annual deduction distinct. Berger excludes premium from the defined capital-employed base; it does not disallow all preliminary expenses, tax the premium receipt, or decide every capital definition. CIT(A)'s shareholder-funds analysis was the strongest competing view, but the exhaustive tax definition prevailed. Check the actual issued capital, qualifying expenditure and commencement/extension dates. Do not copy the Court's 2.5% figure or the reproduced later 5% proviso into another period without version checking. Company-law permission to use a premium account for preliminary expenses and the limited capital-reduction fiction do not themselves enlarge section 35D's base. Do not reconstruct missing yearly quantum from the reported capital/reserve numbers.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Costs: No express costs order in the report

Monetary effect: Rs 5,08,257 disallowance in the stated lead-year account sustained; Rs 1,95,049 allowed deduction not erased. No fresh tax/payment/refund quantified; other-year amount not supplied.

Proceeding outcomes

1.

Case number: Civil Appeal Nos. 2162 and 2163 of 2007

Individual appeals covered: Civil Appeal No. 2162 of 2007; Civil Appeal No. 2163 of 2007

Parties: M/s. Berger Paints India Ltd. v. C.I.T. Delhi-V

Appellant role: Assessee company

Assessment years: 1996-97; 1997-98

Underlying proceeding: Delhi High Court ITA 799/2004 and 797/2004, orders 15 May 2006; Tribunal ITA 2307/Del/2000 (AY 1996-97), order 26 April 2004, and ITA 1434/Del/2001 (AY 1997-98), order 25 August 2004

Docket year mapping: The report identifies both Supreme Court appeals and both years; no unsupported individual Supreme Court appeal-to-year assignment made.

Outcome: Both appeals dismissed; exclusion of premium from section 35D capital-employed ceiling sustained

Costs: No express costs direction in paragraph 25

Pinpoint: Physical 2/SCR 736D-G; physical 9/SCR 743C

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Source url: [Open cited source](#)

Pdf pages: 2; 3; 4

Paragraphs: Both appeals/years, figures and rival assessment approaches, paragraphs 1-11

Source role: Judicial body except expressly identified appellate recital

2.

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: Statutory ceiling/definition and adopted High Court reasoning, paragraphs 14-20

Source role: Judicial body except expressly identified appellate recital

3.

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: Precedent and company-law comparison, disposition, paragraphs 21-25

Source role: Judicial body except expressly identified appellate recital

AMOUNTS AND THEIR DISTINCT REPORTED ROLES

1.

Amount inr: 36464527

Role: Original returned total income AY 1996-97

2.
Amount inr: 35892771
Role: First revised returned total income
3.
Amount inr: 35726644
Role: Second revised returned total income
4.
Amount inr: 36303128
Role: Processed income under provision printed 143(1B)
5.
Amount inr: 703306
Role: Claimed preliminary-expense deduction in narrative, not share-premium receipt
6.
Amount inr: 195049
Role: AO-allowed section 35D deduction
7.
Amount inr: 508257
Role: Disallowed balance; arithmetic $703306 - 195049 = 508257$
8.
Amount inr: 78819679
Role: Issued/subscribed/paid-up capital quoted from accounts; source irregular grouping Rs 7,88,19679 disclosed
9.
Amount inr: 196636734
Role: Reserves and surplus/shareholders funds, not established to be entirely premium
10.
Amount inr: 4550000
Role: Premium in cited Allahabad Bank precedent; not Berger's receipt or dispute
11.
Amount: 2.5%
Role: Historical section 35D expenditure ceiling rate discussed for the target years
12.
Amount: 5%
Role: Later proviso reproduced in report; not target-year factual rate

QUANTIFICATION AND MONETARY LIMITS

Amounts refer to distinct return, deduction, balance-sheet and cited-precedent roles. No independent 1997-98 quantum is supplied. Do not infer that 2.5% of the printed capital/reserve figures reconstructs the reported annual deduction.

REPORTED SOURCE ANOMALIES AND THEIR LIMITS

Frozen catalogue gives only CA 2162/2007 and an Agrawal asterisk; the report expressly includes CA 2163/2007 and identifies Abhay Manohar Sapre J. as the single opinion author.; The report prints section 143(1B) as the processing provision at paragraph 3. It is preserved as printed, not silently relabelled section 143(1). No processing-law issue is decided.; The quoted High Court figures print share capital as Rs 7,88,19,679, an irregular grouping. Digits are preserved and normalised to Rs 7,88,19,679 for identification, not used to reconstruct the tax computation. Reserves and surplus Rs 19,66,36,734 are not independently identified as entirely share premium.; Paragraph 14 includes a later 5% proviso and an imperfect Finance(No. 2)Act 1998 citation. The two assessment years remain 1996-97 and 1997-98; later percentage/time changes are not retrofitted into their facts.; Paragraph 24 describes section 78 as dealing with premium and discount. The separately checked statute titles section 78 Application of premiums received on issue of shares; section 79 deals with discount. The note confines the Court's inference to section 35D and preserves section 78's limited capital-reduction fiction.

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

143(1B), as printed: processing recital only; 143(2): scrutiny notice recital only; 260A: High Court appeal route, no distinct jurisdiction rule decided; Companies Act, 1956 sections 78,159 and ScheduleV PartII: supporting capital-account distinction; Finance Act, 1956 First Schedule PartII ParagraphD Explanation: Allahabad Bank precedent comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Abhay Manohar Sapre, J., for the Court

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED STATUTORY CHECKS AND THEIR LIMITS

1.

Source: Income Tax Department, section 35D, version labelled 1998

Url: [Open cited source](#)

Pinpoint: 1998 version label; subsections (1),(3), Explanation(b), web lines 65-114

Result: The version distinguishes the aggregate expenditure ceiling from annual one-tenth amortisation over ten years, and records later one-fifth/five-year and 5% provisos effective 1 April 1999 for expenditure after 31 March 1998. This is corroborative historical context, not exact authenticated AY 1996-97/1997-98 texts or a complete amendment/current-law review.

2.

Source: Companies Act, 1956, India Code-hosted 332-page compilation

Url: [Open cited source](#)

Pinpoint: Section 78, physical 58/web lines 3650-3672

Result: The separate premium account is subject to an express capital-reduction fiction and specified uses, including preliminary-expense write-off. This limits any overbroad inference from paragraph 24; it does not contradict the specific section 35D holding. Compilation contains 1999 terminology amendment and is not certified as the exact applicable-year version.

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Status: not verified

Search date: 2026-10-06

Scope: Targeted searches for Berger 2017 section 35D later treatment and Subex. A third-party search result reproduces a later Karnataka High Court Subex ITA 394/2016 judgment dated 1 October 2021, including a paragraph applying Berger to share premium; full-page open failed.

Result: Treat as a research lead only. No verified official later judicial source or comprehensive adverse-treatment/citator conclusion is claimed.

Lead url: [Open cited source](#)

BOUNDED NON-PDF SOURCES AND READING LIMITS

1.

Kind: official departmental statutory web text

Title: Income Tax Department, section 35D, version labelled 1998

Url: [Open cited source](#)

Source url: [Open cited source](#)

Selected version: 1998

Accessed date utc: 2026-10-06

Read bounds: Web lines 56-58 and 65-124: historical amortisation, expenditure ceiling, Explanation(b), and Finance (No. 2) Act 1998 provisos effective 1 April 1999 for expenditure after 31 March 1998. Government-hosted Taxmann compilation; not original Gazette or exact 1996-97/1997-98 authenticated compilation.

Raw source retained: False

Sha256: Not stated in the reviewed record

Physical text pages read:

Physical image pages read:

Full document read: False

Current law certification: False

PDF TEXT-ONLY SOURCE CHECKS AND READING LIMITS

1.

Kind: official statutory pdf web extraction

Title: Companies Act, 1956, India Code-hosted 332-page compilation

Url: [Open cited source](#)

Source url: [Open cited source](#)

Selected version: Undated consolidated 1956 Act compilation containing post-1999 amendments; exact as-on date not authenticated

Accessed date utc: 2026-10-06

Read bounds: Section 78(1)-(3) and its footnote, reported physical page 58/web lines 3650-3672; section 79 heading at line 3673 read solely to verify the separate discount title. No substantive section 79 read, complete statutory/amendment chain, Schedule V or page-image read claimed.

Raw source retained: False

Sha256: Not stated in the reviewed record

Pdf pages: Not stated in the reviewed record

Pdf pages basis: No retained original PDF bytes or raw page-count verification; 332 is reported solely by the web extractor.

Physical text pages read:

Physical image pages read:

Full document read: False

Current law certification: False

Web reported pdf pages: 332

Web text physical positions: 58

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 9 PDF pages; SHA-256

c7cabd162e6f4e25bee28173a039b33857068bc7773f8c217d15609a07db974a. Original bytes preserved.

Open cited source rendition

full primary text read: True; all primary page images reviewed: True; material primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; all authored opinions separately accounted for: True; material later treatment limits prominent: 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 identity, judgment date, bench and all listed dockets verified against page images. Frozen INSC label and abbreviated catalogue identity retained separately without rewriting the source.

Both years expressly identified at paragraph 1 with their Tribunal proceedings. No independent per-year deduction quantum is supplied for 1997-98, and the note does not allocate Supreme Court docket numbers to years beyond the stated provenance.

STATUTORY SCOPE

No Income-tax Act 2025 section-equivalence, commencement, transition, savings or automatic precedent carryover certified.

LATER TREATMENT

Source checked 2026-10-06. not_verified

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 9

SHA-256: c7cabd162e6f4e25bee28173a039b33857068bc7773f8c217d15609a07db974a

[Income Tax Department, section 35D, version labelled 1998](#)

[Companies Act, 1956, India Code-hosted 332-page compilation](#)

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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