

M.M. Aqua Technologies Ltd. v. Commissioner of Income Tax, Delhi-III

Civil Appeal Nos. 4742-4743 of 2021

[2021] 8 S.C.R. 237 | 2021-08-11

Whether the issue of debentures accepted under a rehabilitation plan as a complete discharge of outstanding interest qualified as actual payment under the applicable section 43B(d), or was prohibited by Explanation 3C as conversion of unpaid interest into a loan or borrowing.

43B(d) | 43B Explanation 3C

Two-judge bench | Rohinton Fali Nariman, J. | B.R. Gavai, J.

Assessment years: 1996-97

Section 43B changed after this judgment

Later statutory change: CBDT Circular No. 23/2022, paragraphs 14.4-14.5, records that the Finance Act, 2022 amended section 43B Explanations 3C, 3CA and 3D to cover conversion into debentures or other instruments deferring payment. It states applicability from 1 April 2023, for AY 2023-24 onward. Aqua concerns AY 1996-97 and is not a blanket allowance under that amended wording.

[Specified subsequent amendment: paragraphs 14.4-14.5 / PDF pages 57](#)

01 FACTS OF THE CASE

For AY 1996-97, M.M. Aqua filed its return on 28 November 1996 declaring a loss of Rs.1,03,18,572 and claiming a section 43B deduction of Rs.2,84,71,384 for interest discharged by issuing debentures. Financial hardship had led the company to seek a rehabilitation arrangement with its institutional lenders. The arrangement provided for 300,149 convertible debentures of Rs.100 each, totalling Rs.3,00,14,900 for outstanding interest and other charges; the interest component, rather than the entire face value, was the deduction in dispute (paragraphs 3-4; SCR PDF pages 4-6).

The Assessing Officer rejected the claim on 29 October 1998, considering the altered mode inconsistent with the original borrowing terms and the actual-payment requirement. The Commissioner (Appeals) found that the borrowing agreements contemplated revised repayment terms on default and that the institutions had accepted the debentures in effective discharge of the interest liability. ITAT upheld that finding. It also recorded that ICICI treated the interest as business income and that the company claimed no second deduction when the debentures were redeemed in AY 2001-02 (paragraphs 3-6; PDF pages 4-8).

Delhi High Court reversed on 18 May 2015, treating the transaction as conversion of interest into a loan under Explanation 3C, introduced by the Finance Act, 2006 retrospectively from 1 April 1989. It rejected review on 22 July 2016. The assessee pointed out that the question framed on 20 April 2005 referred to funding by a term debenture, but the impugned judgment formulated it as funding by a term loan. The Revenue defended the disallowance on the basis that debentures represented borrowing and relied on National Rayon and Gujarat Cypromet (paragraphs 7-15; PDF pages 8-11).

Source: [scr reported judgment / paragraphs 3-6 / PDF pages 4, 5, 6, 7, 8 / judgment](#); [scr reported judgment / paragraphs 7-15 / PDF pages 8, 9, 10, 11 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Hon'ble Court began with the applicable section 43B text, its non-obstante clause, and the requirement of actual payment rather than mere accrual under a mercantile accounting system. The original section was inserted by the Finance Act, 1983 with effect from 1 April 1984. CBDT Circular No.372/1983 explained its response to deductions claimed for liabilities that remained unpaid. Explanation 3C, inserted in 2006 with stated effect from 1 April 1989, addressed misuse through conversion of interest on an existing loan into a fresh loan. CBDT Circular No.14/2006 dated 23 December 2006 supplied that context (paragraphs 16-18; SCR PDF pages 11-13).

Actual payment was essential, but the applicable clause (d) did not prescribe a particular mode. The Court contrasted the former second proviso's payment-mode language for clause (b), noting its omission from 1 April 2004. That historical comparison did not convert every non-cash transaction into payment (paragraph 19; PDF pages 13-14).

The decisive findings were factual. Both appellate authorities found that the lenders had accepted the debentures under the rehabilitation plan in discharge of the existing interest debt. The borrower's accounts, the language describing issue in lieu of interest, and ICICI's treatment of the amount as business income supported actual payment. The issue extinguished the interest liability; the case was not merely one of unpaid interest being carried into another loan account (paragraphs 20-21; PDF pages 14-15).

Three interpretation principles reinforced that result if the Explanation were thought ambiguous. First, its anti-misuse purpose did not target bona fide actual payments; K.P. Varghese illustrated the need to construe an anti-avoidance provision in light of the mischief it addressed. Second, the label for removal of doubts does not by itself justify changing earlier law retrospectively. Applying Sedco Forex, the Court treated Explanation 3C as explaining the existing clause (d), not adding the new retrospective condition attributed to it by the High Court. Third, a remaining ambiguity was to be resolved in the assessee's favour, following the Cape Brandy and Vodafone interpretation authorities (paragraphs 21-24; PDF pages 14-18). The Court did not invalidate Explanation 3C or remove its express historical commencement date.

The High Court's conclusion that interest had become a loan was contrary to the authorities' factual findings. National Rayon concerned whether a debenture redemption amount was a provision or reserve for Companies (Profits) Surtax Act purposes. Its account of debentures as secured borrowing did not determine whether issuing them had actually paid this particular interest debt. The present question was payment by that mode, not an abstract classification based on convertibility or redemption date (paragraphs 25-27; PDF pages 18-19).

Gujarat Cypromet was also distinguished rather than overruled. There, the outstanding-interest entry was replaced by a new loan credit, squarely engaging Explanation 3C. That decision's passing reference to the impugned Aqua judgment did not analyse Aqua's

02 DISCUSSION BY THE HON'BLE COURT

materially different facts. The factual distinction between a substituted loan and a genuine discharge therefore controlled the outcome (paragraphs 28-30; PDF pages 20-21).

Source: [scr reported judgment / paragraphs 16-19 / PDF pages 11, 12, 13, 14 / judgment](#); [scr reported judgment / paragraphs 20-24 / PDF pages 14, 15, 16, 17, 18 / judgment](#); [scr reported judgment / paragraphs 25-30 / PDF pages 18, 19, 20, 21 / judgment](#)

03 JUDICIAL DECISION

On the findings made in this case, interest of Rs.2,84,71,384 was actually paid through debentures accepted in complete discharge of the interest debt. Explanation 3C did not deny the deduction merely because that mode had been used. The Court set aside the impugned High Court judgments and restored the ITAT judgment and order; the assessee's appeals were allowed (paragraphs 20-25 and 31; SCR PDF pages 14-18 and 21).

Source: [scr reported judgment / paragraphs 20-25 / PDF pages 14, 15, 16, 17, 18 / judgment](#); [scr reported judgment / paragraphs 31 / PDF pages 21 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Appellant assessee

High Court judgments set aside; ITAT judgment and order restored; appeals allowed under paragraph 31

AY 1996-97 interest deduction of Rs.2,84,71,384 restored on the proved actual discharge through debentures

No further deduction on redemption, no treatment of the entire Rs.3,00,14,900 issue as interest, and no blanket exemption for every restructuring or a later statutory version.

Source: [scr reported judgment / paragraphs 3-6 / PDF pages 4, 5, 6, 7, 8 / judgment](#); [scr reported judgment / paragraphs 20-21; 31 / PDF pages 14, 15, 16, 21 / judgment](#)

05 AKHB REVIEW POINT

For a historical section 43B claim involving restructuring, verify the applicable statutory wording and obtain the rehabilitation agreement, lender acceptance, the original and revised borrowing terms, both parties' accounting treatment and evidence against double deduction. The essential distinction is whether the interest debt was effectively discharged or merely converted into another loan or borrowing. A security labelled debenture does not, by itself, resolve that factual inquiry.

Aqua does not authorise ignoring Explanation 3C's express retrospective commencement or treating its anti-misuse purpose as a free-standing exemption. It reads the historical explanation consistently with actual payment on the proved facts. Keep the two amounts separate: Rs.2,84,71,384 interest deduction and Rs.3,00,14,900 total debenture face value. Later amendments, including any later wording directed at debentures or other deferred-payment instruments, require a separate statutory-version check before this 1996-97 result is used in a newer case. This is editorial review guidance, not a present-law conclusion.

Later statutory change: CBDT Circular No. 23/2022, paragraphs 14.4-14.5, records that the Finance Act, 2022 amended section 43B Explanations 3C, 3CA and 3D to cover conversion into debentures or other instruments deferring payment. It states applicability from 1 April 2023, for AY 2023-24 onward. Aqua concerns AY 1996-97 and is not a blanket allowance under that amended wording. This is a bounded official explanatory-circular check, not a comprehensive audit of later legislation or judicial treatment; the later amendment is not described as a retrospective reversal of this decided appeal.

Source: [scr reported judgment / paragraphs 3-6; 18-31 / PDF pages 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20, 21 / editorial synthesis](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

28; 139(1)

PROVISION-SPECIFIC SCOPE

1.

Section: 43B(d); Explanation 3C

Role: operative deduction and actual payment test

Basis: Historical text reproduced in paragraph 16; the 2006 Explanation was expressly effective from 1 April 1989.

Act: Income-tax Act, 1961

2.

Section: 43B former second proviso; 36(1)(va)

Role: historical comparison only

Basis: The former payment-mode proviso for clause (b), omitted with effect from 1 April 2004, is contrasted in paragraph 19; this is not an employee-contribution case.

Act: Income-tax Act, 1961

3.

Section: 28; 139(1)

Role: reproduced statutory context

Basis: Appear in the quoted section 43B text, not separate issues.

Act: Income-tax Act, 1961

4.

Section: 52; 48; 9(1)(ii)

Role: quoted precedent only

Basis: K.P. Varghese and Sedco Forex are used for interpretation principles; capital gains and salary accrual are not the claims decided here.

Act: Income-tax Act, 1961

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED SUBSEQUENT STATUTORY CHECK AND ITS LIMITS

Status: verified in official CBDT explanatory circular

Checked at: 2026-10-04T08:49:01.609262+00:00

Source url: [Open cited source](#)

Paragraphs: 14.4-14.5

Pdf pages: 57

Finding: Later statutory change: CBDT Circular No. 23/2022, paragraphs 14.4-14.5, records that the Finance Act, 2022 amended section 43B Explanations 3C, 3CA and 3D to cover conversion into debentures or other instruments deferring payment. It states applicability from 1 April 2023, for AY 2023-24 onward. Aqua concerns AY 1996-97 and is not a blanket allowance under that amended wording.

Limits: Only the specified amendment explanation and applicability were independently read. Full Finance Act Gazette and all subsequent amendments/cases were not independently reviewed in this bounded check.

SOURCE & VERIFICATION

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

Identified source rendition: 25 PDF pages; SHA-256 90a25f38d33b5de2c53a23e3e1274115971e641a1bd90f9de0cdb6e053373278. Original bytes preserved. Independent cover/end/signature verification and whole-text machine concordance with the fully read SCR opinion, with residual differences inspected. Not represented as a second independent page-by-page reading or cryptographic signature validation.

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The frozen index lists only Civil Appeal No. 4742/2021. Both reviewed covers identify Civil Appeal Nos. 4742-4743 of 2021; the complete pair is used.

The printed headnote's final shorthand refers to section 43, but the judicial analysis is section 43B. Section 43 is not indexed as a separate holding.

The number 300,149 is the count of debentures, each with a Rs.100 face value. The SCR quotation of paragraph 8 contains awkward currency typography; paragraphs 3-4 and the official original establish the correct count and total.

The term-loan formulation reproduced in paragraph 7 is the impugned High Court question. Paragraphs 11-13 preserve the earlier term-debenture formulation and the appellant's criticism. Neither is silently substituted for the other.

The Court did not hold that Explanation 3C was prospectively operative only, invalid or inapplicable to AY 1996-97 simply because enacted later; its application was rejected on the facts and construed as clarificatory.

National Rayon and Gujarat Cypromet were distinguished on their issues and facts, not overruled. Statements within quotations are kept separate from the present Court's reasoning.

An incomplete word in the quoted ITAT discussion of Udaipur Distillery is printed as illegible in the source itself; no legal proposition is built on a guessed restoration.

The official original has 25 pages and the SCR rendition 21 pages. Merits pinpoints are physical pages of the expressly linked SCR PDF; official identity pinpoints use its own pages.

Official and SCR text concordance showed punctuation, digital-signature overlay and currency-typography differences; no conflicting operative result. Cryptographic signature validity was not independently checked.

Historical statutes and circulars are examined as quoted in the judgment; no separate full legislative-history, subsequent-amendment or citator audit is represented as complete.

The specified Finance Act 2022 amendment is independently verified through CBDT Circular 23/2022 paragraphs 14.4-14.5. This narrow check does not turn the overall later-treatment status into a verified citator or current-law certificate.

SCR citation verified on the cover. The frozen metadata contains 2021INSC397, which is not printed on the reviewed cover and is not promoted as an independently verified neutral citation.

AY 1996-97 is the deduction year in dispute. AY 2001-02 appears in the quoted ITAT finding as the redemption year in which no second interest deduction was claimed.

The official cover also identifies SLP (Civil) Nos. 35883-35884 of 2016. Both the substantive High Court decision of 18 May 2015 and review rejection of 22 July 2016 are addressed.

STATUTORY SCOPE

AY 1996-97 section 43B(d) and Explanation 3C as set out and construed by the Court, including the 2006 insertion effective from 1 April 1989. The former second proviso and its 2004 omission are historical comparison only. Later amendments are outside this review.

No automatic mapping to the Income-tax Act, 2025, no comprehensive later-treatment search and no current-law certification.

LATER TREATMENT

Source checked 2026-10-04. Subsequent review proceedings, clarifications, stays, implementation, amendments and later judicial treatment have not been comprehensively checked. This is not a citator or current-law certificate.

IDENTIFIED SOURCE LINKS

[official judgment original - PDF pages: 25](#)

SHA-256: 90a25f38d33b5de2c53a23e3e1274115971e641a1bd90f9de0cdb6e053373278

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