

The Commissioner of Income Tax Jaipur v. Prakash Chand Lunia (D) through Legal Representatives & Another

Civil Appeal Nos. 7689-7690 of 2022

[2023] 7 S.C.R. 85 | 2023-04-24

Whether an assessee carrying on a legitimate silver business could deduct the value of smuggled silver absolutely confiscated by Customs as a business loss, after its value had been added under section 69A and ownership was no longer disputed.

37(1) | 37(1), Explanation 1 | 69A

Two-judge bench | M. R. Shah, J. | M. M. Sundresh, J.

Assessment years: 1989-90

01 FACTS OF THE CASE

DRI officers recovered 144 silver slabs from premises rented by the assessee and two further silver ingots from his business premises. Customs treated the 146 pieces, weighing 4,641.962 kilograms and valued at about Rs 3.06 crore, as smuggled goods, ordered confiscation and imposed a separate personal penalty. For AY 1989-90, the Assessing Officer added Rs 3,06,36,909 under section 69A because ownership was attributed to the assessee and acquisition was unexplained and unrecorded. The addition was sustained through the tax appeals. The High Court considered the tax reference together with an appeal concerning a section 271(1)(c) penalty and allowed a business-loss deduction for the confiscated silver, relying on Piara Singh. In the Supreme Court, the Revenue challenged that relief. The ownership objection had been abandoned, so the live question was deductibility of the confiscation loss, not whether mere possession established ownership.

Source: [reported judgment rendition / paragraphs 1, 2.1-2.3 / PDF pages 6, 7, 8 / judgment / M. R. Shah, J.;](#) [reported judgment rendition / paragraphs 6.7 / PDF pages 15, 16 / judgment / M. R. Shah, J.;](#) [reported judgment rendition / paragraphs 4-6 / PDF pages 17 / concurring judgment / M. M. Sundresh, J.;](#) [official signed judgment / paragraphs 5 / PDF pages 29 / concurring judgment / M. M. Sundresh, J.](#)

02 DISCUSSION BY THE HON'BLE COURT

M. R. Shah J. distinguished Piara Singh: there the assessee was found to carry on smuggling as his business, whereas Lunia carried on an otherwise legitimate silver business and the confiscation arose from an infraction of law. Applying Haji Aziz, Soni Hinduji Kushalji and J. S. Parkar, he held that this loss was not deductible as incidental to the legitimate business. He also noted that Explanation 1 to section 37(1), introduced retrospectively from 1 April 1962, had a bearing even though the claim was framed as a business loss. M. M. Sundresh J. agreed with the result but wrote separate and broader reasons. He read any expenditure in section 37 as including business loss for this purpose, treated the offence/prohibited-purpose bar as applicable to the confiscation loss irrespective of the nature of the business, and relied on the character of confiscation as a proceeding in rem. In his concurrence, he held that Piara Singh and Dr. T. A. Quereshi did not state correct law in light of Haji Aziz and Explanation 1; he specifically characterised Quereshi as per incuriam. Those statements must be attributed to the concurrence rather than presented as an undifferentiated overruling by both judges. His discussion of section 115BBE was contextual: he expressly recognised its prospective character and non-application to the case.

Source: [reported judgment rendition / paragraphs 6-6.8 / PDF pages 14, 15, 16 / judgment / M. R. Shah, J.](#); [reported judgment rendition / paragraphs 10-13 / PDF pages 19, 20 / concurring judgment / M. M. Sundresh, J.](#); [reported judgment rendition / paragraphs 20.1, 23.3-27 / PDF pages 26, 47, 48, 49 / concurring judgment / M. M. Sundresh, J.](#); [reported judgment rendition / paragraphs 14-17, 27 / PDF pages 21, 22, 49 / concurring judgment / M. M. Sundresh, J.](#)

03 JUDICIAL DECISION

The confiscated silver's value could not be deducted as the claimed business loss. The Revenue's paired appeals were allowed, the Rajasthan High Court judgment of 22 November 2016 was set aside, and the orders of the Assessing Officer, Commissioner (Appeals) and Tribunal were restored. No costs were awarded. The section 69A ownership/addition position was already final rather than freshly established through a contested ownership ruling.

Source: [reported judgment rendition / paragraphs 6.7-8.1 / PDF pages 15, 16 / judgment / M. R. Shah, J.](#); [reported judgment rendition / paragraphs 26-27 / PDF pages 48, 49 / concurring judgment / M. M. Sundresh, J.](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Civil Appeal Nos. 7689-7690 of 2022 allowed; High Court judgment in DBITA No. 96/2003 and DBITR No. 6/1996 set aside; AO, CIT(A) and ITAT orders restored; no costs

Claimed confiscation-loss deduction rejected; ownership challenge not live

The broader propositions on section 37 and earlier Supreme Court authorities are specifically in Sundresh J.'s concurrence. Section 115BBE was not applied retrospectively to AY 1989-90. The connected penalty proceeding receives the common disposition, not a separate analysis of the ingredients of section 271(1)(c).

Source: [reported judgment rendition / paragraphs 8.1 / PDF pages 16 / judgment / M. R. Shah, J.](#); [reported judgment rendition / paragraphs 27 / PDF pages 49 / concurring judgment / M. M. Sundresh, J.](#); [official signed judgment / paragraphs 8.1 / PDF pages 27 / judgment / M. R. Shah, J.](#); [official signed judgment / paragraphs 27 / PDF pages 59, 60 / concurring judgment / M. M. Sundresh, J.](#)

05 AKHB REVIEW POINT

Keep two enquiries separate: whether an unexplained-asset addition is valid, and whether a particular loss is deductible. Acceptance of the first does not automatically grant an offset for confiscation. Identify the business actually carried on, the legal basis and nature of the confiscation, and the applicable version of the deduction provisions. Cite Shah J.'s fact-specific reasoning separately from Sundresh J.'s wider section 37 analysis; do not describe Piara Singh or Quereshi as globally overruled without explaining the separate opinions and checking later treatment. Do not use the discussion of section 115BBE to impose a later regime on an earlier assessment. Unlike D. N. Singh, this case proceeded with ownership no longer contested; it does not erase section 69A's threshold conditions. No 2025 Act carryover is certified.

Source: [reported judgment rendition / paragraphs 6.1, 6.7-7 / PDF pages 14, 15, 16 / judgment / M. R. Shah, J.](#); [reported judgment rendition / paragraphs 5, 12-17, 24.1-27 / PDF pages 17, 19, 20, 21, 22, 47, 48, 49 / concurring judgment / M. M. Sundresh, J.](#)

LEAD AND SEPARATE CONCURRING OPINIONS

1.

Author: M. R. Shah, J.

Role: lead_judgment

Paragraphs: 1-8.1, with decimal subparagraphs

Reported pdf pages: 6; 16

Original pdf pages: 1; 27

Paragraph numbering: No para 8 printed; disposition is numbered 8.1; quoted precedent paragraph numbers remain separate

2.

Author: M. M. Sundresh, J.

Role: separate_concurrence

Paragraphs: 1-27, with decimal subparagraphs

Reported pdf pages: 16; 49

Original pdf pages: 28; 60

Paragraph numbering: Restarts at 1; printed original pp. 1-33

DISTINCT ISSUES AND OUTCOMES

1.

Group: Confiscation-loss deduction in the tax reference

Result: Revenue succeeds; deduction refused and lower-authority orders restored

Pinpoint: Shah J. paras 6.8-8.1; reported physical p. 16

2.

Group: Section 69A ownership/addition issue

Result: Not a live ownership dispute; existing findings and abandoned objection left final

Pinpoint: Shah J. para 6.7; Sundresh J. para 5; reported physical pp. 15-17

3.

Group: Connected section 271(1)(c) penalty appeal forming part of common High Court judgment

Result: Within common reversal/restoration order; no separate merits analysis of penalty ingredients supplied

Pinpoint: Shah J. paras 1, 2.3, 8.1; Sundresh J. para 27; reported physical pp. 6, 8, 16, 49

DISTINCTION FROM RELATED CASES

D. N. Singh concerns whether section 69A applies at all to a carrier's possession of bitumen. Lunia concerns the separate confiscation-loss deduction after ownership and the section 69A addition were no longer disputed.

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

2(13); 28; 29; 115BBE; 260A; 271(1)(c)

SOURCE & VERIFICATION

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

Identified source rendition: 49 PDF pages; SHA-256

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[Open cited source rendition](#)

Two separately numbered opinions: Shah J. paras 1-8.1 (with decimal subparagraphs and no paragraph numbered 8); Sundresh J. paras 1-27. The latter expressly concurs in the ultimate conclusion and gives his own reasons at para 3.

Shah J. distinguishes Piara Singh on the legitimate-business facts. Sundresh J. para 26(V) says Piara Singh and Quereshi do not state correct law in the specified statutory context; para 25.1 calls Quereshi per incuriam. These are not silently combined into a unanimous blanket overruling.

Ownership and the section 69A addition were no longer disputed: Shah J. para 6.7; Sundresh J. para 5. This case must not be merged with the carrier-ownership issue in D. N. Singh.

Sundresh J. para 5 includes the awkward phrase nor he owned the silver; its surrounding text says the ownership plea was given up, and Shah J. para 6.7 expressly records ownership as undisputed. The note uses the latter clear statements rather than treating the awkward phrase as a finding of non-ownership.

The reliable repeatedly stated assessment amount in Shah J. para 2.2 and the reference question is Rs 3,06,36,909. The submissions at paras 4, 4.3 and nearby text use anomalous comma/zero variants such as Rs 3,06,036,909; these are not adopted as separate sums.

Reported headnotes occupy physical pp. 1-5; p. 6 begins with case-law references and procedural metadata before Shah J. para 1. Shah J. concludes and Sundresh J. begins on physical p. 16. The concurrence ends on p. 49. No adjoining case is present.

Both tax-reference and connected penalty proceedings are included in the common High Court judgment reversed by the Court. There is no standalone section 271(1)(c) ratio and no verified one-to-one allocation of each Supreme Court appeal number to each High Court file.

Section 115BBE is discussed as a later enactment in Sundresh J. paras 14-17; para 27 preserves its prospective nature and non-application to this case. The quoted 60% rate is not presented as either the relevant AY rate or certified current tax advice.

The official original has 60 physical pages, not the reported rendition's 49; its second opinion restarts printed pagination at 1 on physical p. 28.

The original digital-signing timestamp is later than the judicial decision date. Date taken from signature pages is 24 April 2023.

No later-treatment or current-law certification; no automatic Income-tax Act, 2025 mapping.

SCR citation, date and bench verified at reported PDF p. 1. Full paired appeal number also appears at reported p. 6 and official original pp. 1 and 28. Indexed neutral-citation metadata 2023INSC416 is not independently certified or substituted for the verified SCR citation.

AY 1989-90 is expressly stated in Sundresh J. para 5 (reported physical p. 17; official original physical p. 29, printed concurrence p. 2). Do not infer additional years from the later customs order, statutory amendments or cited precedents.

STATUTORY SCOPE

1961 Act issues as adjudicated in this judgment; no independent 2025 Act mapping

No automatic mapping to, or certification of applicability under, the Income-tax Act, 2025; governing tax year, exact statutory text and savings provisions require separate review.

LATER TREATMENT

Source checked 2026-10-04. Subsequent reviews, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported judgment rendition - Physical PDF p. 1 / SCR p. 85 - PDF pages: 49](#)

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