

Commissioner of Income Tax, Chennai v. Indian Overseas Bank

T.C.A. Nos. 64 & 65 of 2014

2026:MHC:774 | 2026-02-05

Section 271(1)(c) concealment penalty deleted where public-sector bank made a bona fide, fully disclosed double-taxation relief claim under section 90 for its Hong Kong SAR branch.

Income-tax Act, 1961: sections 90, 260A and 271(1)(c) | India-China DTAA (Hong Kong SAR branch territory scope prior to Finance (No. 2) Act, 2009)

High Court of Judicature at Madras | 2-judge bench (Division Bench) | Dr. Anita Sumanth, J. | Mummineni Sudheer Kumar, J.

Assessment years: 2006-07, 2007-08

Substantial question of law reframed by the Court; penalty ruling does not validate underlying India-China DTAA coverage for Hong Kong SAR

In paragraph 23 (PDF pp. 13-14), the Division Bench modified the admitted substantial question of law to substitute the words 'erroneous claim' for 'inflated claim', noting that the figures were fully disclosed from the bank's audited books and the assessee did not contest the quantum disallowance of section 90 relief for Hong Kong SAR (which became eligible as a 'specified territory' under section 90 only w.e.f. 01.10.2009 via Finance (No. 2) Act, 2009). Do not cite this decision as holding that the India-China DTAA applies to Hong Kong SAR on quantum.

01 FACTS OF THE CASE

The assessee, Indian Overseas Bank (a nationalised public-sector bank), operated overseas branches in Singapore, South Korea, Sri Lanka and Hong Kong. In its returns for AY 2006-07 (filed 29.11.2006, revised 28.03.2008) and AY 2007-08 (filed 30.10.2007, revised 27.03.2009), the bank claimed double taxation relief under section 90 in respect of foreign branch profits, including its Hong Kong branch on the premise that Hong Kong was a Special Administrative Region of the People's Republic of China covered by the India-China DTAA. Prior to the Finance (No. 2) Act, 2009 (w.e.f. 01.10.2009), section 90 did not include 'specified territory' and India had no separate DTAA with Hong Kong. The Assessing Officer disallowed the section 90 relief attributable to the Hong Kong branch—which the bank accepted without appeal—and levied penalty under section 271(1)(c) of Rs. 2,34,63,048 for AY 2006-07 and Rs. 4,57,07,937 for AY 2007-08. For AY 2006-07 the CIT(A) deleted the penalty and for AY 2007-08 the CIT(A) confirmed it; by common order dated 19.09.2013, the ITAT cancelled the penalties for both years.

Source: [Paragraphs 1-11; PDF pp. 2-6](#)

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench rejected the Revenue's contention that claiming section 90 treaty relief for the Hong Kong branch for a second consecutive year amounted to furnishing inaccurate particulars or a mala fide 'inflated claim'. Examining the chronology, the Court noted that the return for AY 2007-08 had already been filed on 30.10.2007—more than a year before the assessment order for AY 2006-07 was passed on 30.12.2008 first disallowing the claim—and even the revised return for AY 2007-08 was filed before the bank decided not to pursue a quantum appeal on that point. All branch income figures were drawn transparently from audited accounts, and the question whether the India-China DTAA extended to Hong Kong SAR after the 1997 transfer of sovereignty was a debatable legal interpretation. Applying CIT v. Reliance Petroproducts Pvt. Ltd., (2010) 322 ITR 158 (SC) and distinguishing Union of India v. Dharmendra Textile Processors, (2008) 306 ITR 277 (SC), the Court held that a mere unsustainable legal claim accompanied by full factual disclosure does not attract penalty under section 271(1)(c).

Source: [Paragraphs 12-23; PDF pp. 6-14](#)

03 JUDICIAL DECISION

Reframing the substantial question of law to substitute 'erroneous claim' for 'inflated claim', the High Court answered the question in favour of the assessee and against the Revenue, dismissing both Tax Case Appeals (TCA Nos. 64 and 65 of 2014) with no order as to costs.

Source: [Paragraphs 23-24; PDF pp. 13-14](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee (Indian Overseas Bank). Both Revenue appeals were dismissed, affirming the deletion of section 271(1)(c) penalties of Rs. 2,34,63,048 (AY 2006-07) and Rs. 4,57,07,937 (AY 2007-08).

Source: [Paragraphs 23-24; PDF pp. 13-14](#)

05 AKHB REVIEW POINT

AKHB analysis: where a multi-year legal or treaty-relief position is disallowed in scrutiny, map the exact filing dates of the original and revised returns for the subsequent year against the date of service of the earlier year's assessment order. Demonstrating that the subsequent year's return was filed before the first adverse assessment order—and that all underlying figures matched audited branch schedules—defeats the Revenue's argument of repetitive defiance in section 271(1)(c) / 270A penalty proceedings.

Source: [AKHB analysis based on paragraphs 11-23 / PDF pp. 5-14](#)

SOURCE & VERIFICATION

[Madras High Court official digital judgment PDF - AKHB Cloud Repository](#)

Fourteen-page official Madras High Court common judgment PDF (2026:MHC:774); paragraphs 1-24 span PDF pages 1-14.

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

[Open cited source rendition](#)

Full 14-page official Madras High Court PDF read and verified. Original bytes match SHA-256 02ed7642030035bba4f2609ffdb3def779ba032f30735141468addc28f8d2289.

STATUTORY SCOPE

Applies section 271(1)(c) read with section 90 of the Income-tax Act, 1961 for AYs 2006-07 and 2007-08 (prior to the Finance (No. 2) Act, 2009 amendment to section 90 w.e.f. 01.10.2009 empowering agreements with specified territories). Income-tax Act, 2025 equivalence is not verified.

LATER TREATMENT

Source checked 2026-10-16. Full judgment checked. Applies CIT v. Reliance Petroproducts Pvt. Ltd., (2010) 322 ITR 158 (SC) and distinguishes Union of India v. Dharmendra Textile Processors, (2008) 306 ITR 277 (SC). Comprehensive subsequent judicial treatment has not been verified.

AI DISCLOSURE

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