

Performing Right Society Ltd. & Anr. v. Commissioner of Income-Tax & Others

Civil Appeal No. 488 of 1975

[1977] 1 SCR 171 | 1976-08-10

Whether royalties for All India Radio's Indian broadcasts actually accrued or arose in India under section 5(2)(b), despite an agreement executed and payments received in England, and whether the Society's distribution obligations diverted the income before it became the Society's own.

5(2)(b) (actual accrual or arising in India; operative holding) | 5(2)(a) and Explanations 1 and 2 (reproduced context, not independent holdings) | 9 (deemed-accrual argument unnecessary because actual Indian accrual found; no clause-specific royalty ruling) | 264 (revision in procedural history; no independent jurisdictional construction)

Two-judge bench | A. C. Gupta, J. | Jaswant Singh, J.

Assessment years: 1967-68

Actual accrual and Article 48 holding; historical year and printed-date conflict

This decision concerns AY 1967-68: AIR royalties actually accrued in India under section 5(2)(b), and the Society applied its own income under Article 48 rather than receiving it subject to an overriding diversion. It does not decide a specific section 9 royalty clause, treaty, withholding rule or section 264 jurisdiction question. The earlier 1922 assessments are background. The report prints 23 October 1963 for the challenged assessment order despite the stated 1967-68 year; no corrected date is established. Its headnote also differs from the judicial text on the Companies Act year and treatment of cited authorities. The appeal was dismissed without costs. Comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

Performing Right Society was a London-registered non-resident company limited by guarantee without share capital, comprising composers, authors and publishers of copyright musical works. Its members assigned performing rights to it. It licensed public performance and broadcasting, collected royalties, and distributed receipts by reference to use of members' works after proportionate expenses. Its General Council managed operations under Article 43; Article 48 also permitted allocations for benefits, contributions, reserves and other Society purposes before distributions (physical pages 2-3/SCR 172 B-173 D).

By an agreement executed in England on 13 December 1953, the Society authorised the President of India's All India Radio to broadcast repertoire works from Indian stations and to use originating performances for that purpose. The agreement deemed the licence effective from 1 April 1949, continuing year to year subject to notice. It required broadcasting returns and annual payment in London calculated at £2 for each hour of Western-music broadcasting from each main and external-service station (physical pages 3-4/SCR 173 D-174 A).

Natsin India Private Limited became the Society's Indian attorney in July 1967. The earlier agent, Vernon and Company, had contested supplementary assessments of AIR receipts for AYs 1947-48 to 1950-51 under section 34(1) of the 1922 Act; those appeals ended at the Appellate Assistant Commissioner. The present dispute concerned AY 1967-68, for the accounting year ending 31 December 1966. The Society challenged inclusion of the AIR income by a section 264 revision. The Additional Commissioner rejected revision on 18 July 1970; a Calcutta High Court single judge dismissed the writ, and the Division Bench dismissed the appeal on 24 September 1973 (physical page 4/SCR 174 B-G).

Before the Supreme Court, the Society advanced two grounds: the foreign execution and payment meant that the income was not taxable in India, and its obligation to distribute to members meant the royalties were not its own income. The report prints the challenged assessment order as dated 23 October 1963, an unresolved chronological inconsistency with AY 1967-68; this note does not substitute a conjectured year (physical pages 4-5/SCR 174 E-175 A).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court applied section 5(2)(b). For a non-resident, section 5(2) includes income from whatever source derived which is received or deemed received in India, or accrues, arises or is deemed to accrue or arise in India. The Court's operative basis here was actual Indian accrual, not receipt in India. Execution of the agreement and receipt of payment in England did not prevent the AIR broadcasting income from accruing in India (physical page 5/SCR 175 A-G).

The appellants characterised the English agreement as the income's source. On the established actual-accrual facts, the Court rejected treating that contractual location as decisive. It referred to the statutory phrase "from whatever source derived" and upheld the factual conclusion that income from broadcasts of copyright music from AIR's Indian stations arose in India. It adopted V.G. Every's fact-sensitive, common-sense approach. This is not a finding that the location of income-producing activity is irrelevant, nor a universal rule based solely on the payer's residence (physical pages 5-6/SCR 175 F-176 A).

Section 9 was invoked by the appellants to argue that the income could not be deemed to arise in India. The Court found no need to decide deemed accrual because the income had actually accrued in India. It neither interpreted a particular royalty-deeming clause nor decided a treaty or withholding-tax question. Section 264 describes the route by which the assessment was challenged; its jurisdictional limits were not separately adjudicated (physical pages 4-5/SCR 174 E-G; 175 G-H).

On whose income the receipts were, the Court distinguished diversion by overriding title from application after receipt. The Society relied on Raja Bejoy Singh Dudhuria, where a court decree had charged the taxpayer's resources and diverted the relevant income before it became his. The Court contrasted P.C. Mullick, in which executors applied income already received, and adopted the test explained in Sitaldas Tirathdas: the decisive feature is the nature of the obligation and whether the amount ever reaches the assessee as its income. These authorities are discussed within this judgment; they have not been separately re-reviewed for this note (physical page 6/SCR 176 B-H; physical page 7/SCR 177 A).

Applying that test, the Court held that the royalties were realised as the Society's income. Article 48 was decisive: expenses and additional sums chosen by the General Council for its specified purposes were taken from receipts before distribution. The subsequent use of those receipts therefore applied the Society's income; it did not divert income by an overriding charge before receipt. The conclusion rests on this Society's constitutional arrangements and the receipts in issue, rather than the mere fact that a collecting organisation eventually pays members (physical pages 2-3/SCR 172 E-173 D; physical page 7/SCR 177 B-C).

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

03 JUDICIAL DECISION

The Supreme Court rejected both grounds and dismissed Civil Appeal No. 488 of 1975. The AIR royalties actually accrued or arose in India under section 5(2)(b) and were the Society's own income, subsequently applied under its distribution arrangements. No order as to costs was made (physical pages 5-7/SCR 175 F-177 C).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Assessee's appeal dismissed; no order as to costs

Actual Indian accrual and absence of diversion by overriding title decided on the merits

AY 1967-68 AIR receipts and the Society's Article 48 arrangements. Earlier 1922 assessments are background; no clause-specific section 9, treaty, withholding or section 264 jurisdiction holding.

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

05 AKHB REVIEW POINT

Separate two questions: where the income actually accrues, and whose income it is when received. A foreign contract and foreign payment location do not answer the first without examining the licensed activity and how the fee is earned. A duty to distribute collections does not answer the second without examining the governing instrument, control of receipts and the character of the obligation.

PILCOM later discussed this decision's AIR-accrual conclusion in its own reasoning, before addressing payments connected with cricket matches in India. It also distinguished a quoted Patna High Court decision about foreign on-the-job training. That checked passage supports careful factual comparison, not a general conclusion that every overseas payment connected in some way with India is taxable. The later decision's sports-payment and section 194E setting must remain separate from this 1976 royalty judgment.

Before applying this decision to a new arrangement, independently verify the relevant statutory year, any applicable deeming provision and treaty, and the actual allocation of rights and receipts. Comprehensive later treatment, current-law applicability and a 2025 Act crosswalk remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, date, bench and docket

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 171 heading and H

Source role: reported metadata

2.

Topic: Society's role and Articles 43/48

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 172 B-173 D

Source role: judicial text

3.

Topic: Licence, Indian broadcasts and London payment

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 173 D-174 A

Source role: judicial text

4.

Topic: Actual AY, closed 1922 history, date conflict and procedural route

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: SCR 174 B-G

Source role: judicial text

5.

Topic: Section 5(2) and actual-accrual holding; no deemed-accrual decision

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 175 A-176 A

Source role: judicial text

6.

Topic: Authorities on overriding title and application of income

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 176 B-177 A

Source role: judicial text

7.

Topic: Article 48 application and final order

Source asset id: 1977_1_171_177

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: SCR 177 B-C

Source role: judicial text

8.

Topic: PILCOM direct judicial discussion and application

Source asset id: 2020_6_620_641

Source url: [Open cited source](#)

Pdf pages: 16

Paragraphs: SCR 635, paras 12-14

Source role: later judicial text bounded

9.

Topic: Quoted Patna distinction and Supreme Court response

Source asset id: 2020_6_620_641

Source url: [Open cited source](#)

Pdf pages: 20; 21

Paragraphs: SCR 639-640, para 17(A)

Source role: later judicial text and nested quotation bounded

10.

Topic: PILCOM final disposition

Source asset id: 2020_6_620_641

Source url: [Open cited source](#)

Pdf pages: 22

Paragraphs: SCR 641, paras 19-24

Source role: later judicial text bounded

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A. C. Gupta, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: section 34(1) (closed earlier assessments); section 4(1) (V.G. Every precedent only); Society's Articles of Association: Articles 43 and 48, especially General Council discretion over receipts before distribution; English Companies Acts, 1908 and 1913, as stated in the judicial body; headnote prints 1903 instead of 1908

SPECIFIED LATER JUDICIAL OR STATUTORY CHECKS AND THEIR LIMITS

1.

Kind: bounded later primary judgment check

Title: PILCOM v. C.I.T. West Bengal-VII

Decision date: 2020-04-29

Citation: [2020] 6 SCR 620

Source asset id: 2020_6_620_641

Source url: [Open cited source](#)

Physical text pages read: 1; 2; 3; 9; 11; 16; 20; 21; 22

Physical image pages read: 1; 2; 3; 9; 11; 16; 20; 21; 22

Finding: PILCOM paragraph 12 directly recounts and uses Performing Right Society's Indian-broadcast accrual conclusion; paragraph 13 then finds the cricket payments connected with Indian matches. Paragraph 17(A) quotes the Patna High Court's fact-specific distinction concerning overseas training, then states why that authority is inapplicable to PILCOM. The adverse comparison inside the quotation is not the Supreme Court overruling Performing Right Society. The appeal and two SLPs were dismissed.

Pinpoint: Physical page 16/SCR 635 paras 12-14; pages 20-21/SCR 639-640 para 17(A); page 22/SCR 641 paras 19-24

Limits: Nine disclosed pages only, not the whole 22-page judgment or an exhaustive citator. The headnote's reference table points to counsel discussion at para 7; direct judicial treatment at para 12 was separately checked. No later review of the Article 48/diversion branch was established.

SOURCE & VERIFICATION

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

Identified source rendition: 7 PDF pages; SHA-256

e3b5890c08da7736d5b1c7237324a87786a2b2bcff66e78c1280da49bceb38f8. Original bytes preserved.

Physical page 2/SCR 172 B (Gupta J.) through physical page 7/SCR 177 C. Page 1 contains reporter headnote and appellate metadata; page 2 A contains counsel. No neighbouring judgment.

[Open cited source rendition](#)

The report year is 1977; the judgment was delivered on 10 August 1976. The printed docket is Civil Appeal No. 488 of 1975, verified in a higher-resolution image.; Physical page 4/SCR 174 E prints an assessment order dated 23 October 1963 while identifying AY 1967-68 and accounting year ended 31 December 1966. The date is not silently repaired.; Physical page 1 headnote says English Companies Acts, 1903 and 1913; judicial page 2/SCR 172 B says 1908 and 1913. The judicial description is used.; The headnote groups P.C. Mullick and Sitaldas Tirathdas with "distinguished" authorities. The judicial reasoning instead uses their application-versus-diversion principle, while distinguishing Dudhuria's overriding-title facts.; Actual Indian accrual under section 5(2)(b) controls. The Court declines a deemed-accrual inquiry; no holding on a specific section 9 royalty clause or treaty can be inferred.; The earlier AYs 1947-48 to 1950-51 and section 34(1), 1922 Act proceedings are closed background, not additional years or proceedings decided in this appeal.

The challenged assessment is expressly AY 1967-68, with accounting year ending 31 December 1966. AYs 1947-48 to 1950-51 appear only as earlier section 34(1), 1922 Act proceedings that had ended. The printed assessment-order date is 23 October 1963, inconsistent with the stated current year; no corrected date is inferred.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no current-law carryover certification. Verify the applicable statutory version separately.

LATER TREATMENT

Source checked 2026-10-05. Bounded later primary check completed for PILCOM on disclosed pages only. Comprehensive later treatment, including later treatment of the diversion holding, remains not_verified. No statutory amendment-chain review, current-law certification or Income-tax Act, 2025 mapping was completed.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 7](#)

SHA-256: e3b5890c08da7736d5b1c7237324a87786a2b2bcff66e78c1280da49bceb38f8

[reported judgment bounded later check - PDF pages: 22](#)

SHA-256: b5c0ea2f59187cad40da0f114be709b9779947235aa25df0e0475e24af3fd1f6

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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