

Commissioner of Income-tax, Andhra Pradesh, Hyderabad v. Toshoku Ltd., Guntur Etc.

Civil Appeal Nos. 782-783 of 1973

[1981] 1 SCR 587 | 1980-08-29

Were foreign selling agents' commissions received or deemed received in India merely through book credits, or deemed to accrue in India through a business connection, making their Indian statutory agent assessable?

5(2) | 9(1)(i) | 160 | 161 | 163

2-judge bench | P.N. Bhagwati, J. | E.S. Venkataramiah, J.

Assessment years: 1962-63

Fact-specific historical commission ruling

Toshoku decides receipt and business-connection accrual for AY 1962-63. It is not a universal foreign-commission or section 195 exemption and is not certified under later legislation or the Income-tax Act, 2025.

01 FACTS OF THE CASE

Bommidala Kotiratnam, a Guntur tobacco dealer treated as statutory agent, exported tobacco sold through Toshoku Ltd. in Japan and a separate French selling agent. For assessment year 1962-63, Toshoku was entitled to 3% of invoice value and was the exclusive Japanese agent. The full sale proceeds came to the exporter in India; he credited the commission in his books on 31 December 1961 and remitted it to Toshoku on 1 February 1962. Similar book entries and later remittance were made for the French agent (reported pages 588-589).

The officer assessed the commissions, and the appellate authorities sustained the assessments. The High Court answered the section 161 reference against Revenue. The agents' services were rendered outside India, and their entitlement did not give them disposal or control over the sums merely credited in the exporter's books (reported pages 590-592).

Source: [reported judgment / paragraphs Reported pages 588-592, facts and absence of disposal/control / PDF pages 2, 3, 4, 5, 6 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

Sections 160, 161 and 163 enable representative assessment and recovery; they do not create taxability of otherwise unchargeable income. The decisive inquiry was whether the commissions fell within the non-resident income rules in sections 5(2) and 9(1)(i) (reported page 590).

A credit balance without more represented the exporter's debt. Unlike the contractual arrangement in P.V. Raghava Reddi, the agents had not instructed the exporter to hold and use credited money at their disposal. The credits therefore did not amount to actual or constructive receipt by the non-residents in India. The Court's receipt conclusion depended on absence of disposal or control; it was not a rule that every Indian book credit is ineffective (reported pages 591-592).

For deemed accrual through a business connection, the then Explanation to section 9(1)(i) limited business income to the part reasonably attributable to operations in India. These non-resident agents conducted no business operations in India. The exporter's Indian receipt of tobacco sale proceeds was not an Indian operation of those agents. Their commissions for selling services outside India accordingly were not deemed to accrue or arise in India on these facts (reported page 593).

Source: [reported judgment / paragraphs Reported pages 590-593, receipt and accrual analysis / PDF pages 4, 5, 6, 7 / judicial text](#)

03 JUDICIAL DECISION

Revenue's two appeals were dismissed with costs, with one set of hearing fees. The High Court's answer that the representative assessments were not justified stood affirmed. No remand was ordered (reported page 593).

Source: [reported judgment / paragraphs Reported page 593, concluding disposition / PDF pages 7 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Non-resident commission recipients and their statutory agent

Revenue appeals dismissed with costs; one set of hearing fees; no remand

Final resolution of the stated AY 1962-63 receipt and business-connection accrual issues on the facts found

Not a holding that all overseas commissions or all foreign services escape Indian tax; section 195 withholding, royalty and fees-for-technical-services characterization were not adjudicated.

Source: [reported judgment / paragraphs Reported pages 590 and 592-593, chargeability and dismissal / PDF pages 4, 6, 7 / judicial text](#)

05 AKHB REVIEW POINT

For a comparable commission case, establish where the agent actually worked, whether any operations attributable to that agent occurred in India, and whether an Indian book credit left the amount as a debt or placed it at the recipient's disposal. The identity of the exporter's activities and the foreign agent's activities matters: receipt of export proceeds in India was not treated as an Indian operation of these agents.

Use Toshoku for the receipt and historical business-connection analysis it actually decided. Do not convert it into an unconditional section 195 exemption or a conclusion about different income categories, treaty provisions or subsequently amended nexus rules.

Source: [reported judgment / paragraphs](#) Reported pages 590 and 592-593; editorial application / PDF pages 4, 6, 7 / [judicial text](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

143(3); 256(1)

OTHER GOVERNING STATUTES

1.

Act: Indian Income-tax Act, 1922

Sections: 4(1)(a); 42

Role: Earlier receipt and business-connection decisions discussed

2.

Act: Constitution of India

Sections: Article 136

Role: Special-leave appellate route

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

E.S. Venkataramiah, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 7 PDF pages; SHA-256

a7108641da20dcc69472e999876f26a3ed1c2c674c736974005de4a25d3ef46a. Original bytes preserved.

Complete unnumbered judicial judgment from the author line on physical page 2 through the disposition on page 7, reported pages 588-593; preceding headnote is editorial.

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SCR citation, Supreme Court date, bench and case numbers checked in the preserved reported PDF. No neutral citation inferred from machine metadata.

The judicial narrative expressly identifies assessment year 1962-63 and says that the French agent's sales were in the same accounting period.

The judgment was delivered on 29 August 1980 but appears in [1981] 1 SCR; the report year is not the decision year.; On reported page 588, the jurisdiction line gives the High Court date as 18 November 1972 while the opening judicial sentence gives 18 November 1971. That source discrepancy is disclosed; neither date is silently certified.; Extraction of the opening passage on reported page 591 was distorted; the rendered page confirms that the agents provided selling services outside the taxable territories.; The 1953 Board circular and P.V. Raghava Reddi, R.D. Aggarwal and Carborandum authorities are discussed only as reproduced or summarized in this judgment; their complete originals were not separately reviewed.; No section 195 default, withholding rate, interest liability or later statutory business-connection amendment was decided in this appeal.

STATUTORY SCOPE

Historical judgment review only. No automatic mapping to the Income-tax Act, 2025 or certification of present law or procedure.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent judicial treatment or current-law audit. Any specific cross-case comparison actually read is identified separately.

IDENTIFIED SOURCE LINKS

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

SHA-256: a7108641da20dcc69472e999876f26a3ed1c2c674c736974005de4a25d3ef46a

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