

Barendra Prasad Ray and Others v. The Income-Tax Officer, A Ward, Foreign Section and Others

Civil Appeal No. 1038 of 1973

[1981] 3 SCR 387 | 1981-04-07

Whether a non-resident barrister's sustained professional connection with Indian solicitors could constitute a business connection under the then section 9(1), supporting treatment of those solicitors as his statutory agents under section 163 despite their not paying or undertaking his fees.

5(2) (non-resident total income) | 9(1)(i) and its then Explanation (Indian business connection and attribution) | 160(1)(i) (representative assessee) | 161(1) (representative capacity, like manner and extent) | 163(1)(b) and (c) (statutory agent) | 2(13) and 2(36) (business and profession) | 14; 28-44B (context of heads and computation) | 148 (procedural history) | 195(2) (Officer's initial correspondence; no separate withholding ruling)

Three-judge bench | R.S. Pathak, J. | A.P. Sen, J. | E.S. Venkataramiah, J.

Assessment years: 1970-71

Historical professional-connection ruling; reserved questions remain open

This AY 1970-71 decision treats a sustained, real Indian professional connection as a business connection under the then section 9(1), supporting section 163 agent treatment. It does not tax every non-resident professional receipt, decide a treaty or permanent-establishment question, fix the fee quantum, decide the no-fee hypothetical or independently determine withholding default. Apply the correct statutory and treaty versions. Comprehensive later treatment, current-law status and 2025 mapping are not verified.

01 FACTS OF THE CASE

The appellants were partners of Orr Dignam & Co., Calcutta solicitors acting for a German corporation in patent litigation. Correspondence beginning in May 1965 connected them with the corporation's London solicitors, who briefed British patent barrister Blanco White Q.C. The Indian solicitors supplied records, cooperated in preparation and remained solicitors on record. White appeared with Indian counsel in Suit No. 1124 of 1962 for thirteen hearing days between 27 January and 16 February 1970; the other two suits were adjourned. He left India on 17 February 1970 without arranging payment of Indian income tax on the fees. The Indian solicitors had not themselves delivered his briefs, fixed or paid his fees, or undertaken payment (physical pages 3–4 and 7–10/SCR 389–390, 393–396).

After initial correspondence referring to section 195(2), the Officer proposed treating the solicitors as agents under section 163(1). They sought writ relief denying any business connection and disputing jurisdiction. The Single Judge regarded the petition as premature; the Division Bench instead examined the disclosed connection and rejected their case on the merits. During the appeal process, the firm was treated as agent, a section 148 notice followed, a nil return was filed, and the Officer reported completion of the non-resident's AY 1970-71 assessment, with the final demand held pending this appeal. The Supreme Court appeal by certificate challenged the Division Bench judgment dated 19 February 1973 (physical pages 3–7).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court read the provisions together. Section 160(1)(i) included an agent under section 163 as representative assessee for the relevant non-resident income; section 161(1) imposed assessment in that representative capacity and tax in like manner and to the same extent as against the represented person, subject to Chapter XV. Sections 163(1)(b) and (c) addressed a person in India with a business connection or through whom the non-resident received income. Section 5(2) and the then section 9(1)(i) addressed income accruing, arising or deemed to accrue or arise in India. The quoted Explanation confined the deemed business income, where not all operations occurred in India, to the part reasonably attributable to Indian operations (physical page 11/SCR 397).

The established connection was real, intimate and continuous, not a casual contact. The correspondence had continued from 1965, records passed through the Indian solicitors to counsel, and White appeared with their Indian counsel for their client. His consented appearance and preparation depended on that association. The Court applied the connection test in *R.D. Aggarwal* and held that White earned the fees for the Indian advocacy through this connection (physical page 12/SCR 398 A–F).

The remaining question was whether the professional character excluded it from being a business connection. It did not. The Act's inclusive definition of business, its business-and-profession head of income, and the context of sections 9 and 163 supplied no basis for excluding non-resident professional practitioners. In this setting business connection was broad enough to include professional connection. The Court used earlier authority and partnership-law language as interpretive assistance; the case itself applies the 1961 Act (physical pages 12–15/SCR 398 G–401 B).

It was immaterial on these facts that White could not appear as of right, that the solicitors had not undertaken his fees, or that a barrister could not sue for them. Their willing cooperation enabled the work and the earning of income in India. A letter reported fees of £2,200 plus refreshers of £220 per day, but the Court expressly declined to determine the correctness of those figures. It also reserved what would happen if no fees had been realised at all (physical page 15/SCR 401 B–F).

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

03 JUDICIAL DECISION

The Supreme Court declined to interfere with the Division Bench judgment and dismissed Civil Appeal No. 1038 of 1973. Each party was to bear its own costs (physical page 15/SCR 401 G–H).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue, on the challenged business-connection and representative-agent treatment

Solicitors' appeal dismissed; Division Bench judgment left undisturbed; parties to bear their own costs

Reasoned statutory holding on professional business connection and agent treatment, not merely a premature-writ dismissal

No final calculation of fees or tax, no decision on the expressly reserved no-fee hypothetical, no treaty or permanent-establishment ruling, and no independent section 195 withholding holding.

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

05 AKHB REVIEW POINT

Do not confuse the person who contractually promises the fee with the person who may qualify as a statutory agent. The relevant inquiry here was the evidenced, sustained Indian connection through which the non-resident performed professional work and earned the income. Equally, do not turn a context-specific inclusion of professional connections into a rule taxing every cross-border professional payment.

The original statutory text, Indian operations, representative capacity and limits expressly left open all matter. This note does not determine a treaty entitlement, permanent establishment, modern deemed-income provision, withholding default or present-day agent procedure. Those questions require their own facts and applicable statutory and treaty versions; comprehensive later treatment is not verified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench and appeal

Source url: [Open cited source](#)

Pdf pages: 1; 3

Paragraphs: SCR 387 heading; 389 B–D

Source role: reported metadata and judicial text

2.

Topic: Retainer facts, agency proposal and writ history

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5; 6

Paragraphs: SCR 389 D–392 C

Source role: judicial text

3.

Topic: Interim proceedings and expressly stated AY 1970-71

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 392 D–393 D

Source role: judicial text

4.

Topic: Correspondence, one suit's thirteen-day hearing and fee arrangements

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Paragraphs: SCR 393 D–396 H

Source role: judicial text

5.

Topic: Then statutory framework and limited Indian-operations attribution

Source url: [Open cited source](#)

Pdf pages: 11

Paragraphs: SCR 397 A–H

Source role: judicial text

6.

Topic: Sustained connection and inclusion of professional connection

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15

Paragraphs: SCR 398 A–401 B

Source role: judicial text

7.

Topic: Fee quantum and no-realisation question reserved; dismissal and own costs

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: SCR 401 B–H

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

E.S. Venkataramiah, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (non-resident income and representative-agent provisions as applied to AY 1970-71)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Constitution of India, Articles 133 and 226; Advocates Act, 1961, section 32 (leave to appear presumed by the Court); Indian Partnership Act, 1932, section 2(b) (interpretive analogy); Indian Income-tax Act, 1922, section 42(1) (quoted earlier precedent only)

SOURCE & VERIFICATION**Hon'ble Supreme Court source PDF (reported judgment)**

Identified source rendition: 15 PDF pages; SHA-256

453aa110209c67d9e52c4ac0f9bb950b594cd67642703cdb637fd9be5524004d. Original bytes preserved.

Unnumbered judicial body begins physical page 3/SCR 389 D and ends page 15/SCR 401 G–H. Pages 1–2 and opening page 3 are editorial headnotes, followed by appellate metadata. No neighbouring judgment.

Open cited source rendition

The report's headnote at SCR 389 A prints section 153(1) in its concluding sentence; the judicial body establishes the operative agent provision as section 163(1). The headnote slip is not adopted.; The thirteen-day hearing was in one of the three suits, No. 1124 of 1962; the others were adjourned. The broader three-suit professional relationship is distinct from the hearing actually described.; SCR 392 prints the agency order date as 23 March 1977, then SCR 393 narrates an interim Supreme Court order of 30 November 1973 before reporting completion of assessment in September 1977. The report's awkward chronology is not silently corrected or used to infer a different docket, year or limitation holding.; The initial letters referred to section 195(2), but the Court's reasoned decision concerns business connection and agent treatment. It is not a freestanding holding that these non-paying solicitors breached a withholding duty.; The Court does not verify the quoted fee figures and expressly reserves the case of no fees being realised. Representative-agent status must not be restated as final adjudication of a specified tax demand.; Decision date, three-judge bench, E.S. Venkataramiah's authorship and parties' own costs are verified from the primary report.

The judicial body expressly records the non-resident's completed assessment for AY 1970-71 at physical page 7/SCR 393 C. The underlying patent suits filed in 1962 and 1963 are litigation dates, not tax assessment years.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no present-law certification. Identify the applicable statutory version and procedural route separately.

LATER TREATMENT

Source checked 2026-10-04. not_verified. No subsequent judicial or statutory authority is relied on in this note.

Comprehensive later treatment, later section 9 explanations, treaties, present withholding requirements and 2025 mapping have not been checked.

IDENTIFIED SOURCE LINKS**reported judgment - PDF pages: 15**

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