

Commissioner of Income Tax, Calcutta v. T.I. & M. Sales Ltd.

Civil Appeal No. 1449 of 1974 and connected proceedings (full list below)

[1987] 2 SCR 883 | 1987-04-10

Did the accepted facts establish a business connection making the Indian company assessable as agent of the non-residents, and should the matter nevertheless return to the Tribunal because the High Court used the course-of-dealing affidavit to find facts?

9(1) | 163(1)(b) | 163(1)(a) [printed closing reference; discrepancy preserved] | 256(1)

Two judges | R.S. Pathak, C.J. | Ranganath Misra, J.

Assessment years: See the source-scope notes; no year inferred.

Historical, fact-specific business-connection ruling; affidavit and statutory limits

The accepted course of dealing and Revenue's conduct were decisive. This is not a universal rule that lack of authority to sign contracts prevents business connection, or that a reference court may freely find new facts. The ordinary course was remittal to the Tribunal; the exceptional refusal here rested on full notice, non-traverse, Revenue's own use of the affidavit, the age of the assessments and the reported death of the deponent. The source prints section 163(1)(b) for the issue but section 163(1)(a) in its closing liability sentence; retain the discrepancy rather than silently amend it. Assessment years, tax amounts and appeal-to-company allocations are not stated. Later section 9 wording includes additional agency routes. Comprehensive later treatment, current-law applicability and 2025 mapping remain not_verified.

01 FACTS OF THE CASE

T.I. & M. Sales Ltd. had been assessed as representative assessee for ten non-resident companies, grouped as six in Group A, three in Group B and one in Group C. Group A had no direct agreement with the Indian company; dealings occurred through its agreement with the exporting company. For Group C, the Indian company relied on an agreement described in the narrative as 16 December 1948 while the quoted ITO order dates it 6 December 1948. The ITO treated the arrangement and commission-linked sales as establishing business connection, including Group A's connection through the exporter (physical 5/SCR 887 A-F).

The eight appeals concern six referred questions. Questions 1 and 2 concern the six Group A companies; questions 3 and 4 concern Crane Packing Ltd. under an agreement of 22 March 1955; questions 5 and 6 concern the Group B company printed as Budy Tubing Co. (Australia) Pvt. Ltd. under an agreement of 1 June 1954. The three odd-numbered questions address business connection and section 163 agent treatment; each even-numbered question about deemed profit accrual is contingent on an affirmative answer to its preceding question. The source later quotes the High Court as recording Tribunal relief where one agreement expressly prohibited acceptance of offers, but does not identify that company or allocate every company to each Supreme Court appeal (physical 3-4/SCR 885 H-886 H; physical 10/SCR 892 C-D).

The AAC rejected the assessee's account of the dealings, saying proof had not been furnished and inquiry had been blocked. Cameron, the company secretary, attended on 3 and 4 September 1965; the AAC dismissed the appeals on 17 September 1965. Cameron's 27 December 1965 affidavit, filed with the Tribunal appeals, denied obstruction, described records produced and offered further information. The Tribunal treated those facts as potentially relevant only to quantum, rather than to appointment as agent, and upheld the assessments. The High Court used the untraversed affidavit, found no business connection, answered questions 1, 3 and 5 against the Revenue, and left questions 2, 4 and 6 unanswered as not arising (physical 5-6, 8-9/SCR 887 G-888 E, 890 F-891 C).

The Revenue appealed by special leave. The report prints the High Court order date as 15/21 September 1972 in the proceedings recital but the judicial opening says 15 September 1972. Neither actual assessment years nor assessed income, tax or commission amounts is specified. Group C and the third Group B company appear in the wider history; the six questions do not supply separate adjudications for them.

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

02 DISCUSSION BY THE HON'BLE COURT

The Court reproduced R.D. Aggarwal's 1922 Act analysis: business connection requires a real and intimate relationship between the non-resident's profit-earning business and activity in the taxable territory contributing directly or indirectly to those earnings, with continuity rather than an ordinarily isolated transaction. The connection may take several forms and depends on the facts. Misra J then expressly applied that fact-dependent inquiry to section 163(1)(b) of the 1961 Act and liability under section 9(1). The old Act quotation is supporting authority; it does not make this judgment a 1922-only decision (physical 6-7/SCR 888 F-889 G).

The Tribunal erred in treating Cameron's affidavit as irrelevant to the existence of business connection. Its account of actual dealings bore directly on that threshold question. As accepted by the High Court, procurement and manufacture, contract formation, receipt of price and delivery all took place outside the taxable territory. Orders from India became binding only on acceptance in London; the Indian company lacked authority to accept offers for the Group A or B companies. Group A had no direct contractual privity, and the Group B sole-agency description did not itself confer acceptance authority. On those dealings, absence of an express contractual prohibition made no material difference (physical 9-10/SCR 891 C-892 G).

The judgment quotes the High Court's formulation about acceptance authority expressly in the context of a case like this. It does not replace the wider fact-dependent business-connection inquiry with a rule that authority to conclude contracts is indispensable in every case, or that foreign receipt of price alone defeats Indian liability. No treaty permanent-establishment test, tax rate or quantum computation was decided.

The Revenue's objection to the High Court finding facts from the affidavit had force. Ordinarily, the High Court should have declined that fact-finding use and, if the affidavit was to be utilised, sent the matter back to the Tribunal for fresh disposal. The Court nevertheless refused remittal on the particular history. Rule 10 was quoted; the assessee said the affidavit had been filed under that rule to address assertions contrary to the record. The Revenue had full notice, neither challenged admissibility nor contradicted the contents, and its own counsel used the affidavit before the High Court. The Tribunal had brushed it aside as irrelevant rather than rejected it. The assessments were about a quarter-century old, and the Court was told Cameron had died. In that setting the Revenue appeared by its conduct to have waived the factual challenge, and restoring the Tribunal appeals was inappropriate (physical 10-11/SCR 892 G-893 E).

With those facts accepted, the Court treated R.D. Aggarwal as fully applicable and upheld the no-business-connection result. The closing sentence refers to section 163(1)(a), although the express issue statement at SCR 889 F-G uses section 163(1)(b). Both readings are visible in the page images. This note preserves the discrepancy and does not turn the closing sentence into a freestanding proposition that all representative-assessment liability requires clause (a)

02 DISCUSSION BY THE HON'BLE COURT

(physical 11/SCR 893 E-F).

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

03 JUDICIAL DECISION

The Tribunal should not have dismissed the affidavit as irrelevant to whether business connection existed. On the accepted facts, the High Court's result against the Revenue stood. The ordinary objection to fresh fact-finding in a reference did not justify remittal in these exceptional circumstances. All eight Revenue appeals, Civil Appeals 1449-1456 of 1974, were dismissed without any order for costs (physical 11/SCR 893 A-F). Questions 1, 3 and 5 remained answered negatively; contingent questions 2, 4 and 6 did not arise.

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Respondent assessee, T.I. & M. Sales Ltd.

All eight Revenue appeals dismissed; no remand

Substantive historical sections 9/163 business-connection application and reasoned resolution of the affidavit/reference-court objection

No assessed amount or exact assessment year supplied. No affirmative profit-accrual or quantum decision on questions 2, 4 and 6, no separate Group C holding, no general licence for reference-court fact finding, and no ruling on treaty permanent establishment.

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

05 AKHB REVIEW POINT

Build the factual record around what the Indian business actually did: who accepted orders, where contracts became binding, where manufacture, delivery and payment occurred, and what activities contributed to the non-resident's earnings. An agency label or a commission formula cannot replace that inquiry. Conversely, this result does not make lack of signing authority an all-purpose exemption. Keep the real/intimate/continuous connection analysis distinct from the facts accepted in this case.

The affidavit point is equally bounded. The judgment recognises the ordinary limits on reference-court fact finding; its refusal to remit depended on notice, non-traverse, the Revenue's own reliance, the Tribunal's relevance error, prolonged lapse of time and the reported death of the deponent. It is unsafe to infer that every uncontroverted affidavit automatically proves its assertions or that delay alone requires final disposal.

Later statutory wording requires a separate check. The retained department-hosted 2011 compilation, physical 76-77 and footnote 77, records Explanation 2 to section 9(1)(i), inserted by the Finance Act, 2003 with effect from 1 April 2004. It includes alternatives concerning stock delivery without contracting authority and habitual procurement of orders, subject to the stated agency provisos; Explanation 3 addresses attribution. The official department HTML displaying the 2024 (No. 2) version also includes habitual contract conclusion or the principal role leading to conclusion. These bounded checks prevent exporting the historical result into a universal present-law rule. The 2011 compilation's physical 761 separately confirms that section 163(1)(a) concerns employment and (b) business connection, reinforcing the need to retain the printed discrepancy. No complete amendment history, treaty analysis, comprehensive later-treatment check, current-law certification or 1961-to-2025 mapping has been performed.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 1449 of 1974 / Civil Appeal No. 1450 of 1974 / Civil Appeal No. 1451 of 1974 / Civil Appeal No. 1452 of 1974 / Civil Appeal No. 1453 of 1974 / Civil Appeal No. 1454 of 1974 / Civil Appeal No. 1455 of 1974 / Civil Appeal No. 1456 of 1974

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 1449 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

2.

Case number: Civil Appeal No. 1450 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

3.

Case number: Civil Appeal No. 1451 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

4.

Case number: Civil Appeal No. 1452 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

5.

Case number: Civil Appeal No. 1453 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

6.

Case number: Civil Appeal No. 1454 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

7.

Case number: Civil Appeal No. 1455 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

8.

Case number: Civil Appeal No. 1456 of 1974

Outcome: Dismissed without any order for costs

Allocation limit: Company, assessment year and referred-question allocation not stated

Costs: Without any order for costs, applying collectively to all eight appeals

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 885 F-886 H: six actual section 163 questions, with contingent profit-accrual questions

Source role: judicial text

2.

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 888 C-889 G: old/new Act correspondence, R.D. Aggarwal quotation and express adoption under sections 163(1)(b)/9(1)

Source role: judicial text

3.

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11

Paragraphs: SCR 891 C-893 F: affidavit relevance, course of dealing, ordinary reference-court limit, special no-remand reasoning, statutory-subsection discrepancy and dismissal

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The actual six referred questions invoke section 163 of the 1961 Act, and the Court expressly adopts the fact-dependent business-connection inquiry under section 163(1)(b) for section 9(1) liability. Earlier Act provisions are discussed as corresponding law and within the adopted precedent. No separate 1922-only assessment result or repeal/savings holding is supplied.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Ranganath Misra, J.; single opinion of the Court

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922, sections 4, 42 and 43: stated predecessors of 1961 sections 5, 9 and 163; Indian Income-tax Act, 1922, sections 4(1)(a) and (c), 40(2), 42(1): quoted R.D. Aggarwal reasoning, not separate assessments decided here; Income-tax Act, 1961, section 143: mentioned in quotation of assessee's grievance, no separate construction; Income-tax (Appellate Tribunal) Rules, 1963, rule 10: quoted and considered in affidavit context; Later section 9(1)(i), Explanations 2-3: bounded auxiliary statutory checks only

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: official statutory html bounded version check

Title: Income Tax Department section 9, displayed version 2024 (No. 2)

Url: [Open cited source](#)

Content type: text/html

Displayed statutory version: 2024 (No. 2)

Accessed at: 2026-10-05T19:07:52+00:00

Access status: Successful official web-extracted HTML read

Read bounds: Displayed identity/version lines 39–59 and complete Explanation 2 with both provisos at lines 84–96; Explanation 3 at line 110. Relevant text permits habitual conclusion of contracts or the principal role leading to their conclusion, and includes stock-delivery and order-securing alternatives. Other section 9 explanations and provisions are not relied on. No downloaded PDF, PDF hash, byte length, physical page count or Gazette-original claim.

Full document read: False

Current law certification: False

Note: Bounded later-version caveat only. The displayed 2024 version is not asserted to be the law applicable to any present transaction; commencement history of every change and treaty interaction are not audited.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 11 PDF pages; SHA-256
4353e6246911ac12158b5d97f7ccd4c68229c5c7a7dcec11030f3a0d172a20dd. Original bytes preserved.

Open cited source rendition

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

Printed SCR identity, date, bench and eight proceedings visually checked. Frozen catalogue INSC identifier is not independently authenticated. Judicial text is unnumbered; the six numbered reference questions and numbered editorial HELD propositions are not judicial paragraph numbers.

Closing section 163(1)(a) at SCR 893 F differs from section 163(1)(b) at SCR 889 F–G; headnote also reproduces the (a) wording. No silent correction.; Agreement dated 16 December 1948 in narrative but 6 December 1948 in quoted ITO order, both at SCR 887; no chosen correction.; High Court date 15/21 September 1972 in proceedings recital versus 15 September 1972 in judicial opening, SCR 885.; Company name printed Budy Tubing in question 5; no silent replacement from external assumptions. Secretary's name spelling also varies in the report; neutral Cameron used.; At SCR 889 G–H the source prints Court had produced certain records in the Cameron passage; the note describes the separately established production account without silently amending that sentence.; Eight Supreme Court appeals do not correspond automatically to ten companies; no invented company/year/appeal allocation.; Quoted 1922 sections are kept within their historical Act; source supplies no exact assessment-year allocation across the Acts.

Not specified. The judicial description of assessments about a quarter-century old is not converted into exact years or an Act-by-year allocation. The agreements and appellate hearing dates are not assessment years.

Eight appeals by special leave, printed collectively as 1449–1456/1974. Originating references are I.T.R. Nos. 128 and 160 of 1967. The source gives no appeal-by-appeal company, assessment-year or question allocation; none is invented.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 crosswalk or present-day application. Relevant statutory versions, commencement, savings and later treatment require separate verification.

LATER TREATMENT

Source checked 2026-10-05. Only the expressly described bounded later statutory checks are verified. No comprehensive judicial citator search, current-law applicability audit or 1961-to-2025 mapping.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 11](#)

SHA-256: 4353e6246911ac12158b5d97f7ccd4c68229c5c7a7dcec11030f3a0d172a20dd

[official department hosted historical statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[Income Tax Department section 9, displayed version 2024 \(No. 2\)](#)

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