

# Electronics Corporation of India Ltd. v. Commissioner of Income Tax and another

Civil Appeal Nos. 2697 and 2698 of 1989

[1989] 2 SCR 994 | 1989-05-02

**Whether Article 245 permits Parliament to legislate without any relationship to India, and whether the particular section 9(1)(vii) ingredients satisfied the required nexus in two foreign-service payment disputes.**

9(1)(vii), particularly clause (b) (validity/application referred) | 195, including 195(2) (withholding/NOC context)

Three-judge bench | R.S. Pathak, C.J. | Ranganath Misra, J. | M.N. Venkatachaliah, J.

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

## Limited Article 245 rule; section 9 merits reserved and GVK clarification essential

ECIL declared the general Indian-nexus requirement but referred the particular section 9 question; it did not decide these payments' taxability or grant NOCs. GVK (2011), paragraphs 8–17 and 76, recognises that concluded rule, records later withdrawal of ECIL's appeals, and permits external causes with real or expected real Indian effects. Do not read ECIL as requiring every cause to originate physically in India. The cited GVK passages are verified; comprehensive later treatment and current-law/2025 mapping remain unverified.

## 01 FACTS OF THE CASE

ECIL arranged technical know-how, services and training from a Norwegian company for computer manufacture. The agreement of 2 May 1986 provided NOK 32 million, stated as about Rs.575 lakh, financed partly by Norwegian credit and partly by foreign exchange. The ITO refused a section 195(2) no-objection certificate for remittance without withholding, and the Commissioner upheld the refusal under sections 9(1)(vii) and 195. A similar dispute concerned a separate licence agreement with a United States company (physical pages 3–4).

The Andhra Pradesh High Court dismissed both writ petitions. ECIL challenged legislative competence, asserting extra-territorial operation without an Indian nexus, and had also raised business-connection and discrimination arguments. The Supreme Court granted leave in both cases. It recorded that the described training and payment occurred abroad, and focused on the challenge to section 9(1)(vii)(b). It did not establish assessment years or determine a final withholding amount (physical pages 4–5).

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

## 02 DISCUSSION BY THE HON'BLE COURT

The three-judge Court distinguished Parliament's competence to make law from a valid law's operation or enforcement outside India. Article 245(2) means a parliamentary law is not invalid merely because it has extra-territorial operation. Foreign enforcement difficulties do not themselves negate its validity in Indian courts, which can enforce it to the extent their machinery permits (physical page 6/SCR 999A–D).

The Court nevertheless held that a relationship or nexus with India is necessary to legislative competence under Article 245(1). It rejected the idea of an Indian parliamentary law wholly unrelated to anything in India. It then separated that general proposition from the remaining question whether the ingredients of the challenged section supplied the necessary nexus. Because of its public importance for foreign collaborations, it referred both cases to a Constitution Bench without deciding that particular question (physical page 6/SCR 999E–H).

The limited concluded rule must be read with actual later treatment. In GVK Industries, decided on 1 March 2011, the five-judge Bench expressly identified ECIL's general nexus requirement as conclusively determined, while its section 9 nexus application had been referred. GVK also recorded that ECIL's own appeals had subsequently been withdrawn. It accepted the distinction between making law and operating it, but addressed the risk that ECIL's wording about a provocation within India could be read too narrowly (GVK paragraphs 8–17, physical pages 28–33).

GVK's answer permits legislation concerning external aspects or causes that have, or are expected to have, real impact, effect or consequences for India or Indians. The constitutional connection need not satisfy a preset quantitative test, but cannot be illusory or fanciful; a stronger relationship required by the statute must separately be enforced. Thus ECIL is not a rule that every underlying cause must arise physically inside India, nor authority for unlimited legislation lacking an Indian connection. These are the checked later qualifications, not words attributed to the 1989 Bench (GVK paragraph 76, physical pages 70–71).

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

## 03 JUDICIAL DECISION

The Court granted leave and referred both appeals to a Constitution Bench to determine the particular nexus/validity question. It declared the general Article 245 relationship requirement, but did not finally uphold or strike down section 9(1)(vii), grant the requested NOCs, decide the Article 14/business-connection challenges or determine the foreign payments' taxability. The source gives no costs direction (physical pages 3 and 6). GVK's later account records withdrawal of the ECIL appeals; it is not a final tax-merits answer in these appeals (GVK paragraph 8, physical page 28).

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

**04 OUTCOME / IN WHOSE FAVOUR**

In whose favour: No final taxpayer or Revenue victory on the foreign-payment tax disputes

Leave granted; both appeals referred to Constitution Bench; no express costs direction

General constitutional nexus rule declared; particular section 9 validity/application reserved

Later GVK confirms the limited concluded rule and clarifies real Indian connection; no ECIL withholding exemption or tax-merits disposal.

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

**05 AKHB REVIEW POINT**

Separate constitutional competence, the statutory connecting factors and the tax character of an actual payment. ECIL supplies a limited constitutional proposition, recognised as such by the later Constitution Bench; its reference order does not answer all three questions. A statement that the Supreme Court decided these foreign payments were taxable or exempt would be unsupported.

Use the later GVK formulation when describing the nexus standard. External events or services are not beyond parliamentary reach merely because they occur abroad, but the law needs a real or expected real Indian connection. Treaty protection, the applicable version of section 9 and section 195 procedure require their own analysis. The bounded GVK passages were checked here; broader subsequent treatment, current statutory text and 2025 mapping remain unverified.

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

**PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES**

1.

**Topic:** Identity, bench, grant of leave and two appeals

**Source url:** [Open cited source](#)

**Pdf pages:** 1; 3

**Paragraphs:** SCR 994 and 996B–D

**Source role:** reported metadata and judicial text

2.

**Topic:** Foreign agreements, NOC refusal and challenges

**Source url:** [Open cited source](#)

**Pdf pages:** 3; 4; 5

**Paragraphs:** Unnumbered judicial text; SCR 996E–998G

**Source role:** judicial text

3.

**Topic:** Article 245 principle and reserved application

**Source url:** [Open cited source](#)

**Pdf pages:** 6

**Paragraphs:** Unnumbered judicial text; SCR 999A–H

**Source role:** judicial text

4.

**Topic:** Later recognition of concluded ECIL rule and withdrawn appeals

**Source url:** [Open cited source](#)

**Pdf pages:** 28; 29

**Paragraphs:** Paragraphs 8–9 / SCR 393D–394C

**Source role:** bounded later judicial treatment

5.

**Topic:** Valid law-making/operation distinction and concern with narrow territorial reading

**Source url:** [Open cited source](#)

**Pdf pages:** 29; 30; 31; 32; 33

**Paragraphs:** Paragraphs 11–17 / SCR 394G–398C

**Source role:** bounded later judicial treatment

6.

**Topic:** Later real-nexus formulation and legislative limits

**Source url:** [Open cited source](#)

**Pdf pages:** 70; 71

**Paragraphs:** Paragraphs 76–77 / SCR 435B–436H

**Source role:** bounded later judicial treatment

## **JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS**

R.S. Pathak, C.J.

## **ACT IDENTIFIED IN THE REVIEWED SOURCE**

Income-tax Act, 1961

## **OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE**

Article 245(1) and (2), Constitution of India; Article 14 (challenge recited; not determined)

## **SOURCE & VERIFICATION**

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

Identified source rendition: 6 PDF pages; SHA-256

9f103ce078acab1ff7a605a99530c487fcfde914ef36ff5649d376018f5e5876. Original bytes preserved.

Complete Pathak C.J. judicial body begins physical page 3/SCR 996 and ends page 6/SCR 999. Editorial pages 1–3 distinguished. Both appeals referred, not finally disposed on tax merits.

[Open cited source rendition](#)

This is a unanimous three-judge law-declaring reference decision, not a divided-bench reference. The concluded general proposition is separated from the question expressly referred; its status is corroborated by GVK paragraph 9.; The 1989 source uses language about the provocation being found within India. GVK paragraphs 15–17 and 76 must accompany that language to avoid a rule excluding all external causes regardless of Indian effect.; The High Court's rejection of constitutional, business-connection and Article 14 challenges is procedural history, not a Supreme Court merits determination of those issues.; The 1989 source does not name the Norwegian company, provide an assessment year, state the United States agreement's consideration or quantify withholding. Those details are not invented.; GVK records the later withdrawal of ECIL's appeals but the withdrawal order itself was not independently retrieved. The 2011 statement is attributed to that source; no withdrawal date, reason or tax-merits result is inferred.; GVK is a bounded later-source comparison with its own 71-page rendition and hash. It is not treated as part of the six-page ECIL source, a second new case note or a comprehensive later-treatment search.

### **STATUTORY SCOPE**

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

### **LATER TREATMENT**

Source checked 2026-10-04. No comprehensive later-treatment search is certified. Any actually checked later judgment or statute is expressly identified in this note.

### **IDENTIFIED SOURCE LINKS**

[reported judgment - PDF pages: 6](#)

SHA-256: 9f103ce078acab1ff7a605a99530c487fcfde914ef36ff5649d376018f5e5876

[later judgment bounded comparison - PDF pages: 71](#)

SHA-256: 35fade31732a5c136d6adb220ee833a46699b1c0b143bd39a12b6848c550ff52

[Related note: GVK Inds. Ltd. & Anr. v. The Income Tax Officer & Anr.](#)

### **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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