

Commissioner of Income Tax, West Bengal v. Wesman Engg. Co. (P.) Ltd.

Civil Appeal No. 1535 (NT) of 1978

[1991] 1 SCR 117 | 1991-01-24

Whether, in the accepted section 248 appeal, the appellate authority could determine the quantum or proportion of the remittance chargeable to tax for section 195 deduction purposes.

195 | 195(2) | 200 | 248, historical | 251(1)(c) | 261

Two-judge bench | N.M. Kasliwal, J. | K. Ramaswamy, J.

Assessment years: 1964-65

Historical appeal powers; no universal rate or treaty rule

The holding permits quantum determination within the historical section 248 appeal; general maintainability was outside the referred question. The 75/25 estimate, 65% deduction rate and treaty rejection belong to this case's lower-authority history. Printed/OCR date and Act-year slips are disclosed. The statutory gateway, current remedy and comprehensive later treatment require independent verification.

01 FACTS OF THE CASE

The Indian company had a 1 January 1963 collaboration agreement with a German licensor. It provided a 5% payment for specified new working drawings and a separate 5% royalty, on the relevant ex-factory sale-value bases. For AY 1964-65 the company sought remittance certificates by applications of 4 June and 18 August 1964. The ITO's 5 September 1964 section 195(2) order required tax deduction at 65% on the entire proposed remittance (physical pages 3–5/SCR 119–121).

The company did not dispute the royalty's assessability but challenged taxation of the whole drawings payment. The AAC rejected the offshore-service and treaty-exemption arguments, yet estimated drawing costs at 75% and the taxable net profit at 25%. The Tribunal upheld the quantum jurisdiction and estimate, rejected the treaty ground, dismissed Revenue's appeal and partly allowed the cross-objection. The High Court answered the referred quantum-jurisdiction question for the company. Revenue appealed by certificate (physical pages 5–6/SCR 121–122).

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

02 DISCUSSION BY THE HON'BLE COURT

Revenue first argued that a section 195(2) order was not appealable at all under section 248 and that only a writ remedy lay. The Court held that this maintainability objection was outside the question referred and the certificate: the reference assumed a section 248 appeal and asked only whether the AAC could determine quantum. The Court added, as an alternative observation, that section 248's language was wide enough to cover an order under section 195, and found Meteor Satellite inapplicable (physical page 7/SCR 123).

On the actual question, the Court rejected an all-or-nothing distinction between total and partial denial of deduction liability. The reproduced section 248 refers to sections 195 and 200 and contemplates a person who has deducted and paid tax challenging the obligation. Once seized of that appeal, the AAC could fix quantum or revise the chargeable proportion. Section 251(1)(c), empowering appropriate orders in other appeals, reinforced that authority (physical pages 8–9/SCR 124–125).

The Court agreed with the High Court and Tribunal on jurisdiction. It did not independently establish a general 75% expense allowance or 25% taxable-profit rule, nor decide a new treaty classification for technical drawings. The lower-authority figures and treaty conclusions were the procedural background, not universal withholding rules (physical pages 5–9/SCR 121–125).

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

03 JUDICIAL DECISION

Revenue's appeal was dismissed, sustaining the affirmative answer that the AAC could determine quantum in the section 248 appeal. There was no order as to costs because no one appeared for the respondent. The Court made no fresh numerical tax computation and did not open an unrestricted appeal against every withholding order regardless of statutory conditions (physical page 9/SCR 125).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on appellate quantum jurisdiction

Revenue appeal dismissed; no order as to costs

Final reasoned interpretation of historical sections 248 and 251(1)(c)

Quantum may be addressed within the competent historical section 248 appeal. General maintainability was outside the reference; treaty merits and expense percentages are not fresh general Supreme Court rules.

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

05 AKHB REVIEW POINT

A challenge to withholding liability can concern a chargeable fraction rather than an absolute exemption. Preserve the distinction between the gateway to the historical appeal and the powers available once the appeal is properly before the authority. The judgment's practical contribution is the latter: a partial denial permits a quantum determination within that framework.

Do not extract the 75/25 estimate or the 65% historical deduction rate as a standard rate for technical services or drawings. Also retain the deducted-and-paid condition in the provision the Court quotes, and check the statutory route and version independently before any later use. The broad alternative maintainability remark must be read with the Court's express reference limitation. No present remedy, treaty conclusion or 2025 Act mapping is certified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, referred question, agreement and actual assessment year

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4

Paragraphs: SCR 117, 119–120

Source role: reported metadata and judicial text

2.

Topic: ITO order, lower-authority quantum and treaty positions

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 121–122; unnumbered judicial text

Source role: judicial text

3.

Topic: Maintainability objection outside reference and alternative observation

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: SCR 123 A–G; unnumbered judicial text

Source role: judicial text

4.

Topic: Partial denial, chargeable proportion and section 251 powers

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR 124 A–125 A; unnumbered judicial text

Source role: judicial text

5.

Topic: Final dismissal and no costs**Source url:** [Open cited source](#)**Pdf pages:** 9**Paragraphs:** SCR 125 A–B; unnumbered judicial text**Source role:** judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

N.M. Kasliwal, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER PROVISIONS AND THEIR DISTINCT SCOPE

India–Federal Republic of Germany double-taxation agreement, Articles 3(1) and 16, lower-authority background only; Constitution Article 226, Revenue counsel's proposed alternative remedy

SOURCE & VERIFICATION

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

Identified source rendition: 9 PDF pages; SHA-256

aa44fee799ead3486066fd14bb930cb4e362ebd228ca916704e73e9c5a867e2e. Original bytes preserved.

Editorial headnotes on physical pages 1–2/SCR 117–118; proceeding details and complete N.M. Kasliwal J. opinion from page 3/SCR 119 through page 9/SCR 125. The reproduced agreement, lower-authority positions and counsel submissions are distinguished from the Supreme Court's jurisdictional reasons. No adjacent judgment.

[Open cited source rendition](#)

The headnote presents general appealability as a holding; judicial page 7 first rejects that objection as outside the referred question and gives the broad language observation only in the alternative. The actual decided issue is appellate quantum jurisdiction.; The 75% costs, 25% net profit and 65% deduction rate are case-specific lower-authority figures. The source states no remittance amount and this note invents none.; Treaty Articles 3(1) and 16 appear in the account of the Tribunal's decision. No independent Supreme Court treaty classification or exemption ruling is asserted.; The source lists respondent counsel in the appearances but the judicial narrative and costs order expressly say nobody appeared for the respondent. The disposition follows that operative statement.; The page 6 image prints the certificate date as 8.9.1977; the extracted text misreads 1979. The same page prints Income Tax Act, 1976, whereas the opening, operative sections and statute identity are the 1961 Act. The printed Act-year slip is not adopted.; The judgment quotes section 248 using Deputy Commissioner (Appeals)/Commissioner (Appeals) terminology while discussing an AAC proceeding. No independent line-by-line historical statutory-version audit has been undertaken.

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 or present-law audit is certified. This batch relies only on the identified historical primary judgments.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 9](#)

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