

Continental Construction Ltd. v. Commissioner of Income-Tax, Central-I

Civil Appeal No. 3458 of 1990

[1992] 1 SCR 57 | 1992-01-15

Whether the approved foreign-construction receipts qualified under section 80-O, and whether that character and continuing CBDT approval nevertheless yielded to section 80-HHB(5) for AY 1983-84, including whether the indivisible consideration could be split between the two deductions.

80-O | 80-HHB | 119(1) | 256

Three-judge bench | S. Ranganathan, J. | V. Ramaswami, J. | N.D. Ojha, J.

Assessment years: 1983-84

Historical foreign-project ruling: distinguish approval, overlap and the preserved reconsideration

This 15 January 1992 judgment decides AY 1983-84 under the historical sections 80-O and 80-HHB. The Court accepted section 80-O character and continuing CBDT approval, yet dismissed the appeal because section 80-HHB(5) controlled the indivisible project receipts. Its section 80-O apportionment reasoning does not permit artificial dual relief. Fresh section 80-HHB consideration survived; no 25% deduction was finally awarded. Industrial-company status was not pressed and the section 40(c)/40A(5) appeal was delinked. The reported source has identified internal inconsistencies; use the bounded judicial text and source pins. Later treatment and any current-law or Income-tax Act, 2025 mapping remain not_verified.

01 FACTS OF THE CASE

Continental Construction, an Indian engineering and civil-construction company, had eight overseas contracts recorded in the approval table. Its AY 1983-84 claim related to seven contracts. The Court used the Karkh Water Supply Scheme as the representative contract because the other terms were broadly similar and Karkh accounted for most of the claim. The relevant previous year was calendar 1982. The remaining contract was described as completed earlier, but the note does not infer its identity from the source's inconsistent wording (physical pages 14 and 17–21).

The Baghdad Water Supply Administration awarded the Karkh contract on 17 December 1980 to a consortium of the assessee and an Iraqi State enterprise. Their agreement of 18 December divided responsibilities. The assessee's package, approximately ID 153 million out of ID 326 million, involved surveys, site investigation, design, drawings, civil works and pipelines. Coordination, reporting, commissioning and training obligations provided the factual setting for the information and technical-services questions (physical pages 21–25 and 39–41).

In its March 1981 approval application, the assessee disclaimed the patent/property-right limb but claimed both provision of industrial/commercial/scientific information and rendering of technical services abroad. It explained its claimed computation and asserted that embedded materials and equipment involved no separate profit. These were the applicant's representations, not a Supreme Court computation. After correspondence, CBDT approved the Karkh and Diwaniyah agreements on 28 October 1983 for AY 1982-83, referring to section 80-HHB for later years. On 31 July 1985 the Board replaced that qualification with approval for AY 1982-83 onwards (physical pages 22–28).

For AY 1983-84 the company claimed section 80-O deduction of Rs 89,16,19,198 against stated gross total income of Rs 72,67,45,938. The assessing authority denied both section 80-O relief and, for failure of its conditions, section 80-HHB relief. The CIT(A) sustained the rejection of section 80-O but set aside the assessment for fresh examination of section 80-HHB, considering the company's bona fide reliance on section 80-O. The Tribunal upheld that approach, and the High Court answered the relevant questions against the assessee. The Supreme Court appeal raised the deduction questions; industrial-company status was not pressed and the Revenue's unrelated section 40(c)/40A(5) appeal was delinked (physical pages 13, 19–20 and 30).

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

02 DISCUSSION BY THE HON'BLE COURT

Receipt character under section 80-O. The Court rejected an absolute opposition between business profits and royalty, commission, fees or similar payments. A qualifying receipt may form part of business or professional income. Its label, or absence of a label in a contract, is not decisive. The substantive inquiry is whether consideration relates to the specified use or supply of rights/information or to technical services outside India. The Tribunal had also misread the application: the assessee's negative answer on patent-like property did not abandon its separate information claim (physical pages 34–38).

The work was technically substantial. The assessee used specialised knowledge and skills, imparted relevant information through close coordination with the foreign State enterprise, and rendered technical services to the foreign Government. Those services did not become services only to itself because employees physically performed them. The Court rejected that narrow distinction for this technically demanding contract. Its comments that the 1991 professional-services amendment might be clarificatory were expressly unnecessary to decide the construction-services case; they are not a categorical holding about every professional service (physical pages 39–42).

Apportionment within section 80-O. Considering that provision on its own, the Court rejected the proposition that an integrated contract and consolidated price necessarily precluded deduction. Consideration legitimately attributable to qualifying information or services should be apportioned. This is a principle for identifying qualifying consideration, not an award of the entire turnover or an immunity from expenses, foreign-exchange requirements or other statutory limits (physical pages 41–44).

Priority of section 80-HHB. The Court then examined the separate statutory interaction. The business of executing a foreign project embraces the construction/installation work and its ancillary commitments, technical knowledge and services; it is not restricted to physical building activity alone. Here the information and services arose from execution itself and the single consideration was entirely attributable to that project. Consequently the fields overlapped completely, and section 80-HHB(5) prevented carving out a section 80-O component. The earlier apportionment principle did not defeat that statutory bar (physical pages 45–48).

The Court did not exclude every conceivable independent technical-services arrangement associated with a foreign project. It tentatively envisaged genuinely distinct activities and separately identified consideration, whether under separate contracts or a single agreement. Those possibilities were not the facts decided and do not mean that separate invoicing alone guarantees two deductions. Section 80-HHB applied from AY 1983-84, even to contracts entered into or approved earlier; reduced relief or hardship did not justify grandfathering them (physical pages 47–48 and 58–59).

CBDT approval and the assessing officer. Contract approval under section 80-O continued for the contract's duration from the first relevant approved year, rather than requiring annual renewal. The Board could not arbitrarily restrict or enlarge statutory relief by attaching the qualifications at issue. The 1985 letter therefore validly removed the year limitation, but could neither decide section 80-HHB eligibility nor override its priority. Approval remained effective in its proper field; it did not freeze the statute (physical pages 49–51 and 58–59).

After explaining that its independent section 80-O conclusion made further discussion unnecessary, the Court nevertheless addressed the fully argued question of approval's substantive effect. Beneficial general guidelines,

02 DISCUSSION BY THE HON'BLE COURT

including Circulars 187 of 23 December 1975 and 253 of 30 April 1979, rested on section 119(1). The Department could not reopen aspects examined and decided by the Board while its approval stood. The assessing officer still had to verify the approved formula or basis, the particular year's qualifying items and amounts, and the relevant certification/convertible-foreign-exchange requirements. Approval was therefore more than permission to apply, but less than an automatic quantified deduction. The individual 1985 letter was not a general circular displacing the enacted overlap rule (physical pages 53–58).

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

03 JUDICIAL DECISION

The Court held that the receipts satisfied section 80-O's character requirements and that CBDT had properly approved the contracts. It expressly upheld entitlement under that provision for assessment years before 1983-84. For the actual appeal year, AY 1983-84, the receipts were wholly covered by section 80-HHB and subsection (5) displaced the otherwise available section 80-O relief. The Court affirmed the High Court's conclusion and dismissed Civil Appeal No. 3458 of 1990 without an order as to costs, while rejecting important parts of the reasoning against section 80-O eligibility (physical pages 49–50 and 60).

The existing direction to reconsider section 80-HHB after giving the assessee an opportunity of being heard remained in place. The Supreme Court recognised that course at physical page 30; it did not itself grant or quantify the 25% deduction, waive its conditions, or report a completed reassessment. Question 4 was dismissed as not pressed without a merits opinion, and the Revenue's section 40(c)/40A(5) appeal remained outside this judgment (physical pages 13 and 30).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the appealed AY 1983-84 section 80-O deduction; assessee on section 80-O character and approval principles, with conditional section 80-HHB reconsideration preserved

Civil Appeal No. 3458 of 1990 dismissed; High Court conclusion affirmed; no order as to costs

Final legal determination of section 80-HHB priority for the seven-contract receipts; section 80-HHB eligibility/computation left to the preserved reassessment process

No automatic 25% award, no cumulative 80-O/80-HHB deduction, no separate earlier-year appellate decree, no industrial-company merits ruling, and no disposition of the delinked Revenue appeal

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

05 AKHB REVIEW POINT

Separate four inquiries: what the receipt pays for; how its qualifying component is measured; what the approval actually decided; and whether another provision statutorily displaces the deduction. This judgment shows why an assessee can win on receipt character and approval yet lose the deduction for the year under appeal.

Do not quote the section 80-O apportionment passage without the later section 80-HHB analysis. Legitimate allocation within one deduction provision differs from artificially splitting the very same indivisible foreign-project consideration to avoid a specific overlap prohibition. Any reliance on the Court's separate-activity possibilities requires evidence of real contractual independence and attributable consideration; those passages are cautious illustrations, not an adjudicated safe harbour.

Keep the approval application, correspondence, actual contract obligations, annual computations and foreign-exchange records together. Approval constrains reassessment of matters the Board decided, while leaving verification of the year's claim and statutory conditions to the assessing officer. A continuing approval does not protect a contract from a later applicable legislative restriction.

Finally, a dismissed appeal is not a finding that no deduction of any kind can be available: conditional section 80-HHB reconsideration survived. Conversely, it is not proof that 25% was ultimately allowed. Use the historical statutory text and AY, preserve the unpressed/delinked boundaries, and independently check subsequent treatment and applicable legislation before reliance. No present-law or Income-tax Act, 2025 equivalence is certified.

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

DETAILED DISPOSITION AND CONNECTED GROUPS

Operative groups

1.

Group: Questions 1–3 for AY 1983-84

Result: Assessee fails to secure section 80-O deduction because section 80-HHB(5) controls the overlapping foreign-project receipts

2.

Group: Existing section 80-HHB reconsideration

Result: Fresh consideration with a hearing preserved; conditions and amount not finally adjudicated here

3.

Group: Question 4, industrial-company status

Result: Not pressed; dismissed to that extent without opinion

4.

Group: Civil Appeal No. 3458-A of 1990

Result: Delinked for separate hearing; no merits disposition here

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Title, date and three-judge bench

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 57; report cover

Source role: reported metadata

2.

Topic: Author, certificate appeal, question groups and delinked Revenue appeal

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: SCR 68–70; report metadata and judicial opening

Source role: reported metadata and judicial text

3.

Topic: Historical section 80-O and section 80-HHB text, rates, conditions and overlap restriction

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16; 17

Paragraphs: SCR 70–73; quoted statutory text

Source role: judicial text

4.

Topic: Approval table, seven-contract claim, initial denial and CIT(A) reconsideration

Source url: [Open cited source](#)

Pdf pages: 18; 19; 20

Paragraphs: SCR 74–76; factual and procedural account

Source role: judicial text

5.

Topic: Karkh representative contract and approval application

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23; 24; 25

Paragraphs: SCR 77–81; contract facts and quoted application

Source role: judicial text

6.

Topic: Original approval, extension and departmental correspondence

Source url: [Open cited source](#)

Pdf pages: 26; 27; 28; 29; 30

Paragraphs: SCR 82–86; quoted documents and procedural discussion

Source role: judicial text

7.

Topic: Preserved hearing and fresh consideration of section 80-HHB

Source url: [Open cited source](#)

Pdf pages: 30

Paragraphs: SCR 86 B–C; judicial recognition of existing direction

Source role: judicial text

8.

Topic: Business-income character, similar payments and correction of purported admission

Source url: [Open cited source](#)

Pdf pages: 34; 35; 36; 37; 38

Paragraphs: SCR 90–94; Court reasoning with clause-specific section 9 definitions

Source role: judicial text

9.

Topic: Information and technical services supplied through employees

Source url: [Open cited source](#)

Pdf pages: 39; 40; 41; 42

Paragraphs: SCR 95–98; reasoning and quoted findings

Source role: judicial text

10.

Topic: Apportionment under section 80-O considered separately

Source url: [Open cited source](#)

Pdf pages: 43; 44

Paragraphs: SCR 99–100; quoted Tribunal view followed by Court rejection

Source role: judicial text

11.

Topic: Foreign-project breadth, indivisible consideration and cautious independent-activity alternatives

Source url: [Open cited source](#)

Pdf pages: 45; 46; 47; 48

Paragraphs: SCR 101–104; submissions distinguished from Court analysis

Source role: judicial text

12.

Topic: Duration of approval and section 80-HHB priority

Source url: [Open cited source](#)

Pdf pages: 49; 50; 51

Paragraphs: SCR 105–107; Court reasoning

Source role: judicial text

13.

Topic: Additional discussion of approval scope and binding general guidelines

Source url: [Open cited source](#)

Pdf pages: 53; 54; 55; 56; 57

Paragraphs: SCR 109–113; Court flags additional discussion, then states its views

Source role: judicial text

14.

Topic: Assessing officer verification survives approval

Source url: [Open cited source](#)

Pdf pages: 57

Paragraphs: SCR 113 E–H; three retained assessment functions

Source role: judicial text

15.

Topic: Individual approval cannot override statute; no grandfathering; historical overlap

Source url: [Open cited source](#)

Pdf pages: 58; 59

Paragraphs: SCR 114–115; Court reasoning

Source role: judicial text

16.

Topic: Final holding, appeal dismissal and costs

Source url: [Open cited source](#)

Pdf pages: 60

Paragraphs: SCR 116 A–B; operative paragraph

Source role: judicial text

OTHER GOVERNING STATUTES

1.

Act: Finance Act, 1982

Role: Inserted section 80-HHB with effect from 1 April 1983; separate industrial-company question not pressed

2.

Act: Finance (No. 2) Act, 1991

Role: Professional-services amendment mentioned in argument and discussion at physical page 42; a general retrospective holding about all professional services was unnecessary and not given

3.

Act: Foreign Exchange Regulation Act, 1973

Role: Referred to in the quoted foreign-exchange requirements; no independent FERA question decided

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S. Ranganathan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

APPEAL GROUPING AND SOURCE LIMITS

Single judgment: True

Appeals disposed of: Civil Appeal No. 3458 of 1990

Origin: Delhi High Court judgment and order dated 24 May 1990; report metadata identifies I.T.R. No. 110 of 1987, while the judicial opening explains the connected I.T.R. Nos. 110–112 of 1987 and confines this appeal to the assessee's questions.

Merits questions decided: Questions 1–3: sections 80-O/80-HHB, effect of CBDT approvals and whether the seven-contract receipts could be bifurcated between those provisions

Unpressed question

Question: Question 4: industrial-company status under the Finance Act, 1982

Disposition: Appeal dismissed insofar as this question was concerned because it was not pressed; no opinion expressed

Delinked proceeding

Case number: Civil Appeal No. 3458-A of 1990

Party: Commissioner of Income Tax

Subject: Separate section 40(c)/40A(5) issue arising from I.T.R. No. 112 of 1987

Disposition in this source: Delinked for separate hearing; not disposed of by this judgment

Scope pin: Physical pages 12–14/SCR 68–70

ROLE AND SCOPE OF EACH IDENTIFIED PROVISION

1.

Section: 80-O

Role: Eligibility, receipt character, information/technical services, legitimate apportionment, duration and substantive effect of contract approval; historical version set out at physical page 14

2.

Section: 80-HHB(1), (2)(b) and (5)

Role: Foreign-project business includes ancillary knowledge and technical services; statutory priority excludes overlapping section 80-O deduction for the indivisible receipts in AY 1983-84

3.

Section: 80-HHB(3)

Role: Accounts, reserve and foreign-exchange conditions remain material to the preserved reconsideration of relief; the Court did not itself find all conditions met or quantify a deduction

4.

Section: 119(1)

Role: Supports binding beneficial general CBDT guidelines; distinguished from the individual approval/clarification, which could not displace section 80-HHB(5)

5.

Section: 256

Role: Reference route expressly stated in the judicial opening; no separately decided reference-jurisdiction controversy

6.

Section: 9(1)(vi), 9(1)(vii), 14 and 85-C

Role: Interpretive or historical context. The section 9 definitions are expressly clause-specific, not wholesale imported into section 80-O

7.

Section: 40(c) and 40A(5)

Role: Subject only of the delinked Revenue appeal; no merits decision here

8.

Section: 154 and 288(2)

Role: Occur in the reproduced section 80-HHB machinery; no separate rectification or accountant-definition issue decided

OPERATIVE 1961 ACT PROVISIONS

80-O; 80-HHB(1); 80-HHB(2)(b); 80-HHB(5)

SOURCE & VERIFICATION

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

Identified source rendition: 60 PDF pages; SHA-256

adbaf9eaba9b156c7f70ef8525e5e2c4182bbd3c2940a2366767b14408cd8769. Original bytes preserved.

Complete unnumbered judicial text from physical page 12/SCR 68, beginning Ranganathan J., through dismissal and costs on physical page 60/SCR 116. Editorial headnote and report metadata on physical pages 1–12 separately read. One judgment; no adjacent judgment included.

[Open cited source rendition](#)

SCR volume and opening page, decision date, bench and author checked in the primary report. Catalogue neutral citation not promoted to a PDF-verified citation.

The appeal concerns AY 1983-84, previous year calendar 1982 (physical page 14). Earlier-year approvals and deductions are background; the closing legal conclusion preserves the validity of section 80-O relief before AY 1983-84 but does not dispose of separate earlier-year appeals. The source mentions deductions on some contracts in some years between AYs 1976-77 and 1980-81, and later figures cited by Revenue, without expanding this appeal's assessment-year scope.

The source contains a lengthy editorial headnote on physical pages 1–12. The judicial text begins on page 12; numbered headnote propositions and quoted Tribunal paragraphs are not original Supreme Court paragraph numbers.; Physical page 13 says that all three references were answered for the assessee, although the judicial opening says the stated questions were answered against it and page 20 expressly says questions 1–3 were answered against it. The note follows the explicit appeal split and eventual operative conclusion rather than treating this sentence as a consistent account of every reference.; Report metadata on physical page 12 identifies I.T.R. No. 110 of 1987; the judicial opening discusses I.T.R. Nos. 110–112. The Revenue appeal from the separate reference is expressly delinked and is not silently included in the disposed appeal.; The table lists eight contracts; the text says the AY claim concerned seven and describes the remaining contract as completed earlier, with wording that could be read as the eighth. Since the eighth table entry is Diwaniyah, expressly part of the current claim, no completed-project identity is inferred.; The reproduced approval letter at physical page 26 approves AY 1982-83 in paragraph 1 but refers to AY 1981-82 onwards in paragraph 2 on net computation. The note relies on the express initial limitation and the verified 31 July 1985 amendment; it does not infer an additional earlier approval year.; The departmental clarification is introduced as dated 24 September 1985 on physical page 28, but later discussion on pages 29–30 refers to 14 September 1985. The source is preserved and no date reconciliation is invented.; Physical page 58 describes one assessee argument as restricting section 80-HHB to agreements before 1 April 1983. The fuller submission on page 45 and the Court's explicit rejection on page 59 establish the actual grandfathering argument concerning pre-existing contracts; the isolated before/after inconsistency is not treated as the holding.; Physical page 30 contains differing historical references to 1 April and 1 June 1987 for the later 50% rate, and refers once to confirmation by the CIT rather than the Tribunal. No later-rate proposition is certified; the operative AY 1983-84 comparison is the quoted 25% section 80-HHB regime against otherwise available section 80-O relief.; The source inconsistently gives the High Court report at 185 ITR 178 in the opening and 185 ITR 230 elsewhere, and gives variant citations for Institute of Public Opinion. No corrected external citation is invented; primary-source physical/SCR page pins are used.

STATUTORY SCOPE

Historical AY 1983-84 construction of the Income-tax Act, 1961. No automatic carryover to current law or mapping to the Income-tax Act, 2025 is certified.

LATER TREATMENT

Source checked 2026-10-04. No independent later-treatment review is certified in this note.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 60](#)

SHA-256: adbaf9eaba9b156c7f70ef8525e5e2c4182bbd3c2940a2366767b14408cd8769

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