

Commissioner of Income Tax, Bombay v. Indian Engineering and Commercial Corporation Pvt. Ltd.

Civil Appeal Nos. 1583 and 1584 (NT) of 1977

[1993] 3 SCR 86 | 1993-04-13

Whether cash sales commission paid at a prescribed percentage to the company's employee-directors could be disallowed as perquisites under historical section 40(a)(v) or section 40A(5), and whether the High Court should have required a reference on that issue.

40(a)(v), historical AY 1971-72 provision | 40A(5)(a)(ii) and Explanation 2(b), historical AY 1972-73 perquisite issue | 40(c), historical employee-director ceiling observation | 256(1) | 256(2) | 37, separate unpressed entertainment-expense question printed as section 37(ii)

Two-judge bench | B.P. Jeevan Reddy, J. | N. Venkatachala, J.

Assessment years: 1971-72, 1972-73

Historical perquisite issue; entertainment claim was not decided

The cash-commission reasoning concerns the historical perquisite limb, as Bharat Beedi expressly clarified; it is not a general exemption for cash payments or an employee-side tax ruling. The separate entertainment question was not seriously pressed and received no merits opinion; the quoted CBDT circular was not adopted. Both Revenue appeals were dismissed without costs. The relevant ceiling provisions were deleted from 1 April 1989. Later checks are limited to Bharat Beedi's clarification and Continental Construction's ceiling discussion; comprehensive treatment, current law and 2025 mapping remain unverified.

01 FACTS OF THE CASE

The private company traded in tractors and earth-moving equipment. It paid its three directors, S.B. Lal, S.B. Mathur and A.B. Mathur, salaries of Rs 39,000, Rs 18,000 and Rs 7,800 respectively in each of AYs 1971-72 and 1972-73. Each director additionally received commission of Rs 36,171 for AY 1971-72 and Rs 40,792 for AY 1972-73, calculated at a prescribed percentage of company sales. Those commission figures are per director, not annual totals for the company (physical page 3 / SCR 88).

The ITO treated the commission as perquisites and applied section 40(a)(v) for AY 1971-72 and its successor section 40A(5) for AY 1972-73. The AAC rejected that treatment, and the Tribunal dismissed Revenue's appeals. The Tribunal also refused a section 256(1) reference; the Bombay High Court rejected Revenue's section 256(2) application. Revenue's two Supreme Court appeals challenged that refusal (physical pages 2-4 / SCR 87-89).

There was a separate question about dinner-and-tea expenditure of Rs 19,386 and Rs 29,283 respectively, which the ITO had treated as entertainment expenditure and the appellate authorities had allowed. That issue accompanied the reference request but was not decided on its merits by the Supreme Court (physical pages 3-4 and 8 / SCR 88-89 and 93).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court considered the two historical provisions substantially similar for the point in issue and analysed section 40A(5). Revenue relied on the perquisite limb and argued that the words concerning convertibility into money also brought the cash commission within it. Reading the provision as a whole, the Court rejected the application of that limb to the direct cash sales commission before it. The asset-use alternatives did not fit either. The Court expressly limited its inquiry to this payment, rather than the generality of cash payments (physical pages 4–8 / SCR 89–93).

The judgment separately observed that where a director was also an employee, both the company-director provision in section 40(c) and the employee provision in section 40A(5) were attracted, with the higher ceiling applicable. That observation did not turn this appeal into a fresh, quantified director-ceiling assessment. An apparent printed repetition on physical page 8 calls both sides of the company-versus-employee comparison section 40A(5); the surrounding text distinguishes section 40(c) from section 40A(5) (physical page 8 / SCR 93).

Assessee's counsel brought a CBDT circular differentiating contractual remuneration from a discretionary bounty to the Court's attention. The Court expressly found it unnecessary to comment on that circular. Its contents must not be presented as a rule adopted in the judgment. The Court also recorded that section 40A(5) and section 40(c)(i)–(ii) had been deleted with effect from 1 April 1989 (physical pages 6 and 8 / SCR 91 and 93).

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

03 JUDICIAL DECISION

The Court held that the High Court was justified in refusing to direct a reference of questions 1 and 2 concerning commission/perquisites. Question 3, on entertainment expenditure, was not seriously pressed because the amounts were small relative to the assessee's income; the Court expressly declined to express an opinion on it. Both Revenue appeals were dismissed without costs (physical page 8 / SCR 93).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on the commission/reference issue; entertainment question left undecided on merits

Revenue's Civil Appeal Nos. 1583 and 1584 (NT) of 1977 dismissed; no costs

Reasoned rejection of requested reference on commission questions; express non-decision on the separate entertainment question

Direct cash sales commission and the historical perquisite provisions. No general immunity for cash expenditure, no employee-side exemption, and no merits precedent allowing all dinner-and-tea expenses.

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

05 AKHB REVIEW POINT

Keep three questions separate: the character of the commission, which historical ceiling regime applied to an employee-director, and the independent entertainment claim. The dismissal left the taxpayer's appellate result undisturbed, but only the commission questions received a substantive answer. Do not cite the decision as Supreme Court approval of the entertainment deduction or the quoted CBDT circular.

The immediately later Bharat Beedi Works judgment of 7 May 1993 expressly explains that Indian Engineering's cash-payment observations responded to Revenue's section 40A(5)(a)(ii) perquisite argument and cannot be read outside that context (physical page 8 / SCR 613 of 1993_3_606_615). This primary clarification prevents treating the decision as saying direct cash payments are never expenditure or can never fall within any other statutory provision.

A second bounded later check, Continental Construction, decided on 3 February 1998, cites Indian Engineering's employee-director ceiling observation and reads sections 40(c) and 40A(5) as a composite historical scheme. It explains the aggregate ceiling and statutory exclusions in its distinct overseas-employment dispute (physical pages 9–12 / SCR 527–530 of 1998_1_519_530). That is later use of the ceiling proposition, not a new commission holding.

Both ceiling provisions were already deleted from 1 April 1989, as this judgment itself records. The note concerns AYs 1971-72 and 1972-73 and makes no present deduction, salary-taxability or 2025 Act crosswalk claim. The two bounded later checks do not certify comprehensive subsequent treatment.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench, two-appeal caption, author and proposed reference questions

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: reported metadata and judicial text

2.

Topic: Assessment years, per-director salaries and commissions; separate entertainment figures

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: judicial text

3.

Topic: Historical statutory provisions and reported deletion from 1 April 1989

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: judicial text

4.

Topic: Perquisite contention, limited cash-commission reasoning and employee-director observation

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: judicial text

5.

Topic: Unadopted circular, entertainment non-decision, two appeals dismissed and no costs

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: judicial text

6.

Topic: Later express confinement of cash-payment observations to perquisite limb

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: Exact physical PDF pages; primary judicial text is unnumbered. SCR pagination is given in the note.

Source role: later companion judicial text

7.

Topic: Bounded later application of employee-director ceiling observation and historical exclusions

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12

Paragraphs: Unnumbered judicial discussion, physical pages 9–12 / SCR 527–530; no full rereview of the separate later judgment

Source role: bounded later judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B.P. Jeevan Reddy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 8 PDF pages; SHA-256

55d967d259357afc57776c05648d928c69f224bc80328a939bbcfdfcb25c88e4. Original bytes preserved.

Complete unnumbered judicial text physical pages 2–8 / SCR 87–93; editorial headnote pages 1–2 kept separate. Perquisite question, employee-director ceiling observation, unadopted CBDT circular, unpressed entertainment issue and costs distinguished.

Open cited source rendition

The source contains two appeals, Nos. 1583 and 1584 (NT) of 1977; ingestion metadata listed only No. 1583. Date, bench and author are confirmed from the report.; The commission amounts Rs 36,171 and Rs 40,792 are each director's commission for the respective year; they are not aggregate company expenditure.; Physical page 3 calls the successor provision section 40(a)(5) in one sentence. The reproduced provision and repeated surrounding text establish section 40A(5); the anomaly is not propagated into tags.; Physical page 8 twice prints section 40A(5) in the company-versus-employee comparison. The contextual contrast is section 40(c), applicable to companies, against section 40A(5), applicable to employees of companies or others. The literal repetition is disclosed.; The separate entertainment question is printed as section 37(ii); no unprinted subsection is invented. The Court declined to decide that question because it was not seriously pressed and involved small amounts.; The earlier Tribunal order is described as concerning 1967-68 to 1968-70, an anomalous range in the report. It is not treated as the present assessment-year list or silently corrected.; The CBDT circular is reproduced at counsel's instance, but the Court expressly makes no comment on it.; The broad-looking cash-payment language is bounded by Bharat Beedi's later explanation of the perquisite limb. Continental Construction is checked only for later use of the employee-director ceiling proposition; comprehensive treatment remains unverified.

Both years are expressly identified. The earlier Tribunal order followed in the proceedings concerns different years and does not enlarge the present assessment-year list.

The decided dispute is employer-side perquisite disallowance, not general taxability of cash payments to employees. The reproduced section 40A(5) also includes its salary limb; Bharat Beedi subsequently confines the cash-commission reasoning to the perquisite limb. The entertainment subsection appears as "37(ii)" in the report; no precise unprinted subsection is silently substituted.

STATUTORY SCOPE

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

LATER TREATMENT

Source checked 2026-10-04. Only the specifically identified later primary passages have been checked. No comprehensive subsequent-treatment search or present-law certification is claimed.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 8

SHA-256: 55d967d259357afc57776c05648d928c69f224bc80328a939bbcfdfcb25c88e4

later companion judgment direct clarification - PDF pages: 10

SHA-256: bae705185c9a8a3d679eb2aa2c8d6352f51429d4a6caeb213aede40f41c05867

bounded later judgment - PDF pages: 12

SHA-256: 2e2390d3e13aeb7db383518a0506299036462672674fb76ed07899d46901bc66

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