

A.S. Glittre D/5 I/S Garonne and Ors. v. Commissioner of Income Tax, Kerala-II

Civil Appeal Nos. 8–13 (NT) of 1984

[1997] 3 SCR 556 | 1997-04-03

Whether excess tax paid under section 172(4), and refunded after the non-resident shippers elected regular assessment under section 172(7), carried interest under historical section 214.

172(4) (historical summary shipping assessment) | 172(7) (historical regular-assessment election and payment fiction) | 214 (historical excess advance-tax interest) | 2(1) (later definition expressly distinguished)

Two-judge bench | K.S. Paripoornan, J. | S.P. Kurdukar, J.

Assessment years: 1967-68, 1969-70

Historical shipping election and refund-interest ruling

Section 214 interest was allowed after these assesseees elected regular assessment under section 172(7) and excess tax was established. The Court expressly addressed pre-1 April 1989 periods. The headnote mislabels the election provision; the judicial text controls. This is not automatic interest on every shipping-tax refund or a present-law rate/computation ruling. Comprehensive later treatment and statutory mapping remain unverified.

01 FACTS OF THE CASE

The non-resident shippers, represented by a common agent, carried goods from Cochin. Fernbrook visited during the previous years for AYs 1967-68 and 1969-70; Ferndale during the year for AY 1967-68; and Fernwave, Fernmoor and Ferngate during the year for AY 1969-70. Freight earnings were summarily assessed under section 172(4), and the assessed tax was paid (paragraph 2, physical page 3).

The shippers then invoked section 172(7) and filed returns seeking regular assessments. Those assessments yielded substantially lower income, and the excess tax was refunded. The ITO and Appellate Assistant Commissioner refused interest; the Tribunal allowed section 214 interest by treating the payments as advance tax. The High Court reversed on the view that payment in advance of tax was merely adjustable and differed from advance tax (paragraphs 2–3, physical pages 3–5).

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

02 DISCUSSION BY THE HON'BLE COURT

Section 172 supplied a summary levy-and-recovery procedure but also gave the shipowner or charterer a right to elect regular assessment before expiry of the assessment year relevant to the previous year in which the ship departed the Indian port, under the historical wording of subsection (7). When exercised, that election required assessment of total income under the other provisions of the Act and superseded the ad hoc assessment. The ancillary and consequential provisions relevant to determining that liability followed as well (paragraphs 4 and 6, physical pages 5–7).

The direction to treat earlier payments as payments in advance of tax created a legal fiction placing them on par with advance-tax payments. Giving effect to that fiction included historical section 214 interest where the regular assessment revealed excess payment. The Court rejected the High Court's distinction between advance tax and payment in advance of tax, and its reliance on the adjustment heading of section 44C of the 1922 Act (paragraph 7, physical pages 7–9).

The Court expressly identified these as periods preceding the definition of advance tax inserted in section 2(1) with effect from 1 April 1989. It did not resolve the operation of that later wording in a later assessment year (paragraph 5, physical page 6).

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

03 JUDICIAL DECISION

The referred question was answered in the affirmative for the assessees. The High Court judgment was reversed and the batch of six appeals allowed with costs, including advocates' fees of Rs 5,000 payable in each appeal. The shippers were entitled to section 214 interest on the excess disclosed by the section 172(7) regular assessments; the judgment did not calculate individual interest amounts (paragraph 7, physical page 9).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessees

Six appeals allowed; High Court reversed; costs including advocates' fees of Rs 5,000 in each appeal

Final historical section 214 entitlement ruling after section 172(7) regular assessment

Depends on the regular-assessment election and excess payment found on that assessment; no interest rate, individual computation or post-1989 regime determined.

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

05 AKHB REVIEW POINT

Keep the two assessment stages visible. The refund arose after the taxpayers invoked the statutory regular-assessment option; the Court gave the resulting payment fiction its consequential effect. It did not order interest on every payment or refund under the shipping procedure regardless of an election. Check the applicable election period, assessment history and excess actually found before using the reasoning.

This section 214 ruling concerns assessment periods before 1 April 1989. The judgment itself separates the later section 2(1) definition, so its broad language about advance-tax consequences should not substitute for checking later statutory provisions and their conditions. The original amounts of interest and the applicable rate are not supplied. Comprehensive later treatment remains unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench and six-appeal number

Source url: [Open cited source](#)

Pdf pages: 1; 3

Paragraphs: Cover and jurisdiction block

Source role: reported metadata

2.

Topic: Ships, assessment years, refund and reference history

Source url: [Open cited source](#)

Pdf pages: 3; 4; 5

Paragraphs: Paragraphs 2–3

Source role: judicial text

3.

Topic: Regular-assessment election and historical statutory wording

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: Paragraph 4

Source role: judicial text

4.

Topic: Express pre-1989 limitation

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: Paragraph 5

Source role: judicial text

5.

Topic: Supersession of summary assessment and legal-fiction reasoning

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: Paragraphs 6–7

Source role: judicial text

6.

Topic: Section 214 entitlement and six-appeal costs disposition

Source url: [Open cited source](#)

Pdf pages: 9

Paragraphs: Paragraph 7

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

K.S. Paripoornan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 9 PDF pages; SHA-256

e52ec4d3fe50a8fb5d49385658fc51829c98441420b590324df0edbce752fe0f. Original bytes preserved.

Entire judicial text physical pages 3–9/SCR 558–564, paragraphs 1–7; editorial material on physical pages 1–3 separately read. Six-appeal disposition retained.

[Open cited source rendition](#)

The first-page editorial narrative twice refers to section 172(4) where the regular-assessment election or adjustment under section 172(7) is meant. The judicial text and quoted subsection (7), not that editorial slip, govern this note.; The corpus single-appeal metadata is incomplete: physical page 3 identifies Civil Appeal Nos. 8–13 (NT) of 1984.; The unusual D/5 I/S spelling in the party name is retained from the source cover rather than silently changed to D/S.; Paragraph 5 expressly places the disputed periods before the 1 April 1989 section 2(1) amendment. This note makes no finding about its later effect or a different refund-interest provision.; The Rs 5,000 figure is advocates' fees in each appeal, not the interest awarded or a lump sum for the batch.; The extracted text misreads the ship Fernbrook as Pembrook. The rendered judicial page 3 clearly prints Fernbrook in both occurrences; the facts use the page image.

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. Comprehensive subsequent judicial and statutory treatment has not been verified. No present-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

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

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