

Commissioner of Income Tax, Delhi (Central-I) v. M/s. Continental Construction Ltd.

Civil Appeal Nos. 3311–3313 of 1993

[1998] 1 SCR 519 | 1998-02-03

Whether remuneration for an employee-director's period of employment outside India must be excluded under section 40A(5)(b)(i) before calculating the aggregate historical ceiling under section 40(c) and the first proviso to section 40A(5)(a).

40(c) (historical) | 40A(5)(a), (b)(i) and (c) (historical)

Two-judge bench | Sujata V. Manohar, J. | S.S.M. Quadri, J.

Assessment years: 1983-84

Historical overseas-employment exclusion, not an unlimited director allowance

The holding excludes the specified overseas-employment expenditure from the historical aggregate ceiling for employee-directors; it does not automatically allow every director payment or decide an export deduction. All three appeals concern the stated AY 1983-84. The printed remuneration grouping is retained without reconstruction, and costs are unquantified. Sections 40(c) and 40A(5) were omitted from 1 April 1989 according to the bounded historical entries checked. Comprehensive later treatment and current law remain unverified.

01 FACTS OF THE CASE

The civil construction company executed overseas projects in Libya and Iraq. For AY 1983-84 it paid remuneration and commission to directors. The ITO disallowed Rs 13,94,98,570 as exceeding the historical Rs 72,000-per-director ceiling. The source prints total remuneration as Rs 14,0074,570 with unusual comma grouping; no revised arithmetic is imposed (physical pages 3–4).

The assessee did not dispute the treatment of remuneration to two India-based directors, subject to the Rs 72,000 allowance for each. Its dispute concerned employee-directors stationed abroad for the company's work. The Commissioner accepted exclusion of remuneration for their overseas employment periods; the Tribunal and High Court agreed. Revenue brought three appeals, all described by the judgment as pertaining to AY 1983-84 (physical pages 3–4).

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

02 DISCUSSION BY THE HON'BLE COURT

Sections 40(c) and 40A(5) were not mutually exclusive. Their linked provisions formed a composite scheme for directors who were also employees. The Court reviewed the historical overall ceiling and the different component ceilings, drawing on Indian Engineering and Commercial Corporation and related decisions. That discussion concerned how the applicable ceiling operated; the disputed issue was which expenditure entered the ceiling calculation at all (physical pages 4–10).

Section 40A(5)(b)(i) excluded expenditure relating to an employee's period of employment outside India from clause (a). The Court found no reason to lose that exclusion merely because the employee also held a directorship. Since both sections operated for the aggregate ceiling, both also had to be read when identifying expenditure excluded from it. The Court approved the corresponding approach in Lucas TVS, while keeping that case's foreign-technician facts distinct (physical pages 10–12).

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

03 JUDICIAL DECISION

The question was answered in the affirmative and in favour of the assessee. All three Revenue appeals were dismissed with costs. The overseas-employment expenditure covered by section 40A(5)(b)(i) was excluded when calculating the aggregate ceiling under the proviso to section 40A(5)(a). No costs amount or fresh deduction computation was supplied (physical page 12/SCR 530).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Three Revenue appeals dismissed with costs; referred question answered for assessee

Final historical ceiling/exclusion interpretation for AY 1983-84

Applies to expenditure falling within the identified overseas-employment exclusion for employee-directors; not a blanket deduction of every director payment, an export-profit deduction, or a current remuneration ceiling.

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

05 AKHB REVIEW POINT

Establish that the director was also an employee and identify the period of employment outside India. Then separate expenditure excluded from the calculation from expenditure that enters a capped total. A dual office does not erase an exclusion expressly attached to the employee relationship, but other conditions for deductibility are not displaced by this ceiling decision.

These provisions are historical. The bounded 2011 compilation entries on physical pages 300 and 303 record omission of section 40(c) and section 40A(5), respectively, by the Direct Tax Laws (Amendment) Act, 1987 from 1 April 1989. The old Rs 72,000 ceiling should therefore not be presented as a current payroll rule. No later company-law, transfer-pricing or other deduction regime has been examined.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, all three appeals, relevant year and facts

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Historical sections and explicit overseas-employment exclusion

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Interlocking provisions and preceding ceiling authorities

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Application to employee-directors and operative dismissal

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Historical omission of section 40(c)

Source url: [Open cited source](#)

Pdf pages: 300

Paragraphs: Section 40(c) omission entry, printed 1.259

Source role: bounded historical statutory compilation entry

6.

Topic: Historical omission of section 40A(5)

Source url: [Open cited source](#)

Pdf pages: 303

Paragraphs: Section 40A(5) omission entry and footnote 51, printed 1.262

Source role: bounded historical statutory compilation entry

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Sujata V. Manohar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 12 PDF pages; SHA-256

2e2390d3e13aeb7db383518a0506299036462672674fb76ed07899d46901bc66. Original bytes preserved.

Complete unnumbered judicial text from physical page 3/SCR 521 through page 12/SCR 530; all 12 source pages read.

Preceding editorial matter and prior-case facts distinguished.

[Open cited source rendition](#)

The reporter records Civil Appeal Nos. 3311–3313 of 1993, not only the lead No. 3311 recorded in the machine index. The judicial text identifies AY 1983–84 for the appeals; no additional years are invented.; Physical page 4 prints total remuneration as Rs 14,0074,570, disallowance as Rs 13,94,98,570 and the amount relating to the two India-based directors as Rs 7,61,05,230. These figures are preserved without deriving a reconciled final deduction.; The caption and complete text concern remuneration ceilings for employee-directors abroad. Overseas-project facts do not make this a section 80-O, 80HHB or export-turnover decision.; The broad headnote shorthand that employee-director expenditure is reasonable and hence not subject to a ceiling must be read with the precise statutory exclusion and period of foreign employment in the judicial text.; The cited foreign-technician case, component-ceiling cases and the treatment of Travancore Rayons are part of the Court's historical reasoning, not independently checked later-treatment findings.

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. Only the expressly identified bounded comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 12](#)

SHA-256: 2e2390d3e13aeb7db383518a0506299036462672674fb76ed07899d46901bc66

[official department hosted historical statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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