

Commissioner of Income Tax v. P.V.A.L. Kulandagan Chettiar (Dead) through LRs.

Civil Appeal No. 5752 of 1997 and connected proceedings (full list below)

[2004] Supp. 2 SCR 697 | 2004-05-26

Whether the Malaysian rubber-estate income and capital gains from Malaysian immovable property in these appeals were taxable in India under the particular historical India–Malaysia double-taxation agreement and the accepted fiscal-domicile/permanent-establishment facts.

4 | 5 | 90

Two-judge bench | S. Rajendra Babu, C.J. | G.P. Mathur, J.

Assessment years: See the source-scope notes; no year inferred.

Historical treaty and fact-specific relief; no blanket foreign-income exemption

The appeals concerned the historical India–Malaysia treaty and accepted Malaysian plantation/property facts. The Court did not decide that may be taxed always means taxable exclusively abroad. Treaty dates and the firm/individual fiscal-domicile descriptions in this report require care; no universal residence rule, exemption for all foreign income, reliable assessment-year schedule or foreign-credit computation is supplied. Apply the correct treaty/statutory version; current law and comprehensive later treatment remain unverified.

01 FACTS OF THE CASE

The narrated respondent was a firm owning immovable property at Ipoh, Malaysia. It earned Rs 88,424 from rubber estates and Rs 18,113 as short-term capital gains on sale of property. The Income Tax Officer taxed both in India. CIT(A), the Tribunal and the High Court accepted the treaty objection; the recorded factual finding was that there was no Indian permanent establishment for the Malaysian rubber-plantation business (SCR 701–703, 720–721).

Revenue's appeals raised two questions about the Malaysian income and the property gains. Counsel debated allocation of taxing rights, the expression may be taxed, credit under Article XXII and the scope of immovable-property income. The Court reproduced the historical treaty, including fiscal domicile, permanent establishment, immovable property, business profits and double-taxation relief. Counsel referred to signature in October 1976; the Court's introduction to the quoted agreement gives 1 April 1977 (SCR 708–720). These are statements in this report, not a verified present treaty history.

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

02 DISCUSSION BY THE HON'BLE COURT

The Court explained that liability under sections 4 and 5 is subject to the applicable section 90 agreement. A treaty cannot itself impose a liability absent from domestic law; where domestic liability exists, a qualifying agreement may reduce or exclude it, with the Act applying to the extent more beneficial to the assessee (SCR 704–705).

On the accepted facts, the property and the relevant plantation establishment were in Malaysia and there was no Indian permanent establishment for that business. The Court declined to reopen those findings and used the assessee's closer economic connection with Malaysia to determine fiscal domicile under the treaty. On that basis it held the plantation income could not be taxed in India (SCR 720–721). The report describes the lead respondent as a firm, while its discussion uses personal/economic-relations language; the reproduced Article IV separately states an effective-management rule for dual-resident non-individuals. The note does not recast that tension as a general residence test.

Crucially, the Court expressly found it unnecessary to decide the competing semantic constructions of may be in Article VII. It upheld the High Court's conclusion for different reasons. It also rejected the contention that capital gains were outside income covered by the agreement: in relation to the immovable property before it, the domestic definition of income and Article VI applied, with Article II(2) supporting inclusion of substantially similar income taxes. It found no need to determine the case through OECD material or foreign decisions (SCR 721–722).

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

03 JUDICIAL DECISION

All the Revenue appeals were dismissed. The exclusion of the identified Malaysian plantation income and immovable-property capital gains from Indian tax was sustained on the historical treaty and accepted facts. The operative ending contains no express costs direction, new computation or remand (SCR 722).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assesseees

Revenue appeals dismissed

Final on the two treaty questions as applied to the accepted Malaysian immovable-property and plantation facts

Not a general foreign-income exemption, a ruling that every may-be-taxed clause exclusively allocates taxing rights, or a determination of all treaty-residence, foreign-credit or present treaty questions.

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

05 AKHB REVIEW POINT

Begin with the precise treaty version and its effective period, the relevant income article, the domestic charging provision and the actual residence/establishment findings. This judgment interprets the historical agreement reproduced in the report. Its result must not be transplanted automatically to a replacement treaty, later section 90 text or notifications, different income categories, securities gains, or an enterprise whose material residence and permanent-establishment facts differ. No comprehensive later treaty, notification or statutory audit is claimed here.

Keep the Court's reason separate from the parties' broader submissions: it deliberately did not resolve may be as an abstract exclusive-allocation formula. Nor does the presence of an overseas permanent establishment, by itself, establish an Indian resident's exemption for every foreign receipt. The firm/individual fiscal-domicile tension and the two treaty-date descriptions should remain visible rather than be silently repaired. Do not infer Malaysian tax actually paid, a credit computation or assessment years not reliably supplied.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 5752 of 1997 / Civil Appeal Nos. 5754–5756 of 1997 / Civil Appeal No. 5761 of 1997 / Civil Appeal No. 5760 of 1997 / Civil Appeal No. 6229 of 1997 / Civil Appeal No. 2006 of 2000 / Civil Appeal No. 2451 of 2000 / Civil Appeal No. 5746 of 1997

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, connected appeals and narrated facts

Source url: [Open cited source](#)

Pdf pages: 1; 4; 5; 6

Paragraphs: Cover; jurisdiction; unnumbered opening reasons, SCR 700–702

Source role: reported metadata and judicial text

2.

Topic: High Court account and domestic-law/treaty relationship

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8; 9

Paragraphs: Unnumbered reasons, SCR 702–705; High Court views distinguished from Court's discussion

Source role: judicial text

3.

Topic: Historical treaty descriptions and disputed year in submissions

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: Counsel submissions and Court's treaty introduction, SCR 708–710

Source role: submissions and judicial text

4.

Topic: Historical fiscal domicile and treaty provisions

Source url: [Open cited source](#)

Pdf pages: 15; 16; 17; 18; 19; 20; 21; 22; 23; 24

Paragraphs: Reproduced Articles II, IV, V, VI, VII and XXII, SCR 711–720

Source role: historical treaty as quoted in judgment

5.

Topic: Accepted factual basis, expressly avoided semantics, capital gains and dismissal

Source url: [Open cited source](#)

Pdf pages: 24; 25; 26

Paragraphs: Unnumbered concluding reasons, SCR 720–722

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Sections 4, 5 and 90 underpin the Court's treaty/domestic-law discussion. Section 2(24) and section 91 are mentioned in submissions; the tax-incentive sections reproduced within Article XXII are not separately decided. The operative treaty provisions are the historical Articles II, IV, VI and VII, read with the reproduced Article XXII.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S. Rajendra Babu, C.J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 26 PDF pages; SHA-256

5d51d850e31b635bc431b2b673b975d49ea51a8611ecbc40dfe5122715212ce6. Original bytes preserved.

Entire unnumbered judicial text from the author line on physical page 5/SCR 701 through dismissal on physical page 26/SCR 722, including counsel submissions on pages 9–14, the historical treaty quotation on pages 14–24, and the Court's own conclusion on pages 24–26. Pages 1–4 and opening of page 5 are reporter material. No adjacent judgment.

[Open cited source rendition](#)

No dependable schedule of the assessment years in all ten appeals is supplied. The anomalous printed year 1970-80 appears in counsel's historical submission on SCR 708; it is neither silently corrected nor treated as the lead year.

This is the historical India–Malaysia treaty as reproduced, using Articles IV, VI, VII and XXII. Present treaty text, later protocols/notifications, section 90 amendments and comprehensive subsequent treatment have not been audited.; Counsel's October 1976 signature account and the Court's 1.4.1977 description appear in different parts of the report. They are not silently made a single execution, notification or effective date.; The lead facts call the respondent a firm; the Court uses closer personal/economic relations while Article IV(3) separately supplies effective management for non-individuals. No general rule that a foreign permanent establishment determines every entity's treaty residence is inferred.; The Court expressly avoids deciding the abstract meaning of may be and sustains the High Court's conclusion for different reasons. The High Court's and counsel's wider formulations are not all Supreme Court holdings.; The printed 1970-80 in submissions and conflicting/malformed Muthaiah citations are preserved as source anomalies, not corrected assessment-year or citation metadata.; Rs 88,424 and Rs 18,113 are the narrated lead facts, not amounts allocated to all connected appeals. No costs direction or foreign tax-payment finding is invented.

STATUTORY SCOPE

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

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment has not been verified. Only expressly identified bounded comparisons, if any, have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 26](#)

SHA-256: 5d51d850e31b635bc431b2b673b975d49ea51a8611ecbc40dfe5122715212ce6

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