

Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai

Civil Appeal No. 9 of 2007

[2007] 1 SCR 112 | 2007-01-04

Whether separately priced offshore supplies and offshore services under the LNG turnkey contract were chargeable in India, and how domestic accrual rules and the India–Japan treaty limited attribution to the Indian permanent establishment.

5(2) | 9(1)(i) and Explanation 1(a) | 9(1)(vii) | 90(2) | 115A

Two-judge bench | S.B. Sinha, J. | Dalveer Bhandari, J.

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

Historical offshore-services reasoning changed by later statute; partial contract-specific relief

The appeal was allowed only in part on the identified offshore facts; onshore liability was not contested. The checked later section 9 Explanation removes the domestic requirement that services be rendered in India, retrospectively from 1 June 1976. Keep treaty attribution and goods analysis separate. Source passages conflict on service utilisation and use subsection (vii)(c) despite the Indian-resident payer. The AAR's 20% gross-basis approach was under challenge. No universal offshore exemption, current-law certificate or comprehensive later-treatment verification.

01 FACTS OF THE CASE

The Japanese company joined a consortium to develop Petronet LNG's receiving, storage and regasification facilities at Dahej under a fixed-price turnkey arrangement. Members had separately specified responsibilities and payments. The contract distinguished offshore supply, offshore services, onshore supply, onshore services, and construction/erection. Offshore supply and service prices were payable in US dollars; the other components had their own currency allocations. The contractual schedules treated offshore supply as equipment/material supplied from outside India with property passing on the high seas, and offshore services as design, engineering and other services rendered from outside India (paragraphs 1 and 12–16).

Only offshore supply and offshore services were contested in the AAR proceedings; liability for onshore components and construction/erection was not put in issue. The five questions asked whether offshore supply was taxable, what amount was attributable if so, whether offshore services were taxable, the taxable extent if so, and whether related expenses were deductible. The AAR answered for Revenue, declined to quantify attributable supply profits without evidence, and treated offshore fees as gross-basis income subject to the stated 20% ceiling, without expenses. Business connection, an Indian PE, and passage of property outside India were among the undisputed premises (paragraphs 2–9).

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

02 DISCUSSION BY THE HON'BLE COURT

Offshore supply: the Court rejected the inference that a turnkey label or execution of the contract in India necessarily made all its income taxable there. It read the agreement as a whole but recognised distinct obligations, separate prices and operations in different territories. Applying section 5(2), section 9(1)(i) and apportionment, it held that the specified supply transaction, including transfer of property and payment outside India, was not taxable in India on these facts. The existence of a business connection did not itself establish that the particular income accrued through it. The domestic exclusion was sufficient for the supply conclusion (paragraphs 19–31, 38, 42–54, 65, 75–76 and 86).

Treaty attribution: the judgment separately distinguished domestic business connection from a treaty PE. Article 7 and paragraph 6 of the India–Japan Protocol called for the PE's actual participation in the profit-producing transaction. The Court found no PE involvement in the offshore transactions and refused to attribute every receipt under the project merely because an Indian PE existed. Its discussion applied Article 7 to the offshore services and did not treat head-office services outside India as services of the PE simply because they belonged to the same project (paragraphs 17, 68–76 and 83–87).

Offshore services: as its historical domestic-law reasoning, the Court read section 9(1)(vii) as requiring rendering as well as utilisation in India, or the stated live territorial link, and found that requirement unmet. It also relied on lack of attribution under the treaty, distinguishing effective connection from attribution. The rendering-in-India requirement must not be republished as an unqualified operative rule after the later section 9 amendment identified below (paragraphs 78–87).

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

03 JUDICIAL DECISION

The appeal was expressly allowed only in part and to the extent of the preceding holdings, with no costs. Paragraph 86 excludes the identified offshore supply transaction; paragraph 87 excludes the identified offshore services under the reasoning and treaty findings stated there. Paragraph 88 does not order a remand, quantify a new taxable amount, or separately grant an expense deduction. Onshore components and construction/erection remain outside the dispute; the result must not be described as exemption of the entire turnkey contract.

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, to the extent of the offshore components decided

Appeal allowed in part to the stated extent; no costs; no express remand

Reasoned determination of the offshore supply and offshore services issues in the advance-ruling appeal; no quantified assessment

Specific demarcated contract and offshore/PE facts. Onshore taxability was not contested. The domestic services-rendering nexus is subject to the checked later statutory change; treaty eligibility, wording and attribution require separate analysis. No general exemption for all offshore receipts or a current rate/deduction rule.

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

05 AKHB REVIEW POINT

Build separate factual records for supply, services and Indian installation: title and payment, contractual pricing, place of performance, and the PE's contribution. A composite commercial project does not dispense with component-level chargeability and attribution analysis. Equally, calling consideration offshore does not prove that no Indian operation or relevant treaty connection contributed to it. The AAR's five conditional questions should not be collapsed into a general project exemption.

The official section 9 text labelled 2014 was actually checked. Its Explanation after subsection (2), with footnote 17, records the 2007 insertion and the 2010 substitution, both retrospective to 1 June 1976. For clauses (v), (vi) and (vii), the substituted text removes dependence on Indian residence/place of business/business connection or rendering services in India. This materially displaces the judgment's domestic rendering-location requirement; it is not, by itself, a conclusion about the separate treaty or offshore-goods analysis. The check is bounded; 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 and AAR proceeding

Source url: [Open cited source](#)

Pdf pages: 1; 11; 12

Paragraphs: Cover; jurisdiction line; opening and 1–2

Source role: reported metadata and judicial text

2.

Topic: Five AAR questions, disputed scope and AAR answers

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16

Paragraphs: 2–9

Source role: judicial text

3.

Topic: Contract obligations, title, definitions and price table

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21; 22; 23; 24; 25

Paragraphs: 12–16

Source role: judicial text

4.

Topic: Treaty and statutory text reproduced

Source url: [Open cited source](#)

Pdf pages: 25; 26; 27; 28; 29

Paragraphs: 17–18

Source role: judicial text

5.

Topic: Separation and apportionment analysis

Source url: [Open cited source](#)

Pdf pages: 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 39

Paragraphs: 19–54

Source role: judicial text

6.

Topic: Treaty attribution and business-connection distinction

Source url: [Open cited source](#)

Pdf pages: 42; 43; 44; 45; 46; 47

Paragraphs: 65–76

Source role: judicial text

7.

Topic: Historical services nexus and inconsistent utilisation wording

Source url: [Open cited source](#)

Pdf pages: 47; 48; 49; 51

Paragraphs: 78–85 and 87(5)–(8)

Source role: judicial text

8.

Topic: Holdings on offshore supply and services; precise operative relief

Source url: [Open cited source](#)

Pdf pages: 49; 50; 51; 52

Paragraphs: 86–88

Source role: judicial text

9.

Topic: Bounded primary-source check of post-decision section 9 changes

Source url: [Open cited source](#)

Locator: Published version labelled 2014; section 9(1)(vii), Explanation following subsection (2), and footnote 17 (2007 insertion / 2010 substitution, retrospective to 1 June 1976)

Source role: official statutory html

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

5(2) / 9(1)(i): Non-resident receipt/accrual and business-connection attribution, separating offshore supply from Indian operations

9(1)(vii): Historical offshore-services reasoning; read with the prominently stated, actually checked later statutory amendment

90(2) / treaty: India–Japan Articles 5, 7 and 12 and paragraph 6 of the Protocol, as reproduced in this judgment

115a: AAR's historical gross-basis services ruling, not a Supreme Court adoption of its rate or disallowance of expenses

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.B. Sinha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 52 PDF pages; SHA-256

83a08e06565657f6850b16d9e2bc674a0b024c5da1a6ab0fb365c34b632f3156. Original bytes preserved.

Judicial paragraphs 1–88, including the opening leave order, on physical pages 12–52 (SCR 123–163). Pages 1–11 are reporter/editorial and jurisdiction/counsel material. No adjacent judgment.

[Open cited source rendition](#)

Advance-ruling appeal concerning the 19 January 2001 contract and 19 March 2001 supplementary agreement; the judgment does not identify a specific assessment year.

The report spells the party name Ishikawajima-Harima; the familiar Ishikawajima-Harima form is retained as the short title for identification.; The source prints section 241(Q)(1) in paragraph 2. It is not treated as a reliable section-number entry for advance-ruling procedure; the AAR number is 618/2003 and the ruling date is 11 October 2004 on the jurisdiction line.; Paragraph 78 refers to section 9(1)(vii)(c), although the payer is described as Indian-resident; paragraph 87(7) says utilisation in India was not shown, while paragraph 78 says the services were used here. Both source passages were visually checked. The note does not silently harmonise these statements or transfer them into a present-law payer test.; Paragraph 86(7) uses taxable-entity language about the PE. The note relies on the defined transaction/attribution holding and does not infer that a PE is invariably a separate legal taxpayer.; The quoted AAR gross-basis 20% conclusion and refusal of expenses are the ruling under challenge, not an independently affirmed Supreme Court rate or expense prohibition.; The later statutory source is the specifically labelled 2014 version. It is an actual bounded amendment-text check, not a comprehensive subsequent judicial-treatment or current consolidated-law audit.

STATUTORY SCOPE

Current statutory equivalence and 2025 Act applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent judicial or statutory audit. Any actually checked comparison is narrowly identified; no current-law or 2025-Act certification.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 52](#)

SHA-256: 83a08e06565657f6850b16d9e2bc674a0b024c5da1a6ab0fb365c34b632f3156

[official statutory html](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.