

Commissioner of Income Tax, Meerut and Anr. v. M/s. Hyundai Heavy Industries Co. Ltd.

Civil Appeal No. 2734 of 2007 / Civil Appeal No. 2735 of 2007

[2007] 7 SCR 288 | 2007-05-18

Whether Korean designing/fabrication profits were attributable to the Indian installation PE and whether its Indian-operation profits should be computed at 3% or 10% of the relevant gross receipts.

4 | 5(2) | 9(1) | 44BB | 143(2) | 144 | 260A

Two-judge bench | S.H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: 1987-88, 1988-89

Mixed result: offshore profits excluded, Indian profit computation increased

Revenue's appeals were partly allowed: the specified Korean profits were excluded, but Indian installation/commissioning profits were restored from 3% to 10% of gross receipts. The 10% is not a tax rate. The supply-before-PE premise is fact-specific; the source's narrated dates conflict and have not been repaired. The headnote and instruction-number recitals also contain discrepancies. No general offshore-receipt or 90% exemption, present-law certificate or comprehensive later-treatment verification.

01 FACTS OF THE CASE

Hyundai, a South Korean company, contracted with ONGC on 12 March 1985 to design, fabricate, install, hook up and commission offshore platforms and related Bombay High facilities. The appeals concerned AYs 1987-88 and 1988-89. It claimed exclusion of Korean operations and initially denied an Indian PE; alternatively it relied on its project accounts and a completed-contract approach. The Assessing Officer rejected the accounts and treated the turnkey arrangement as integrated. The first appellate authority computed 1% of the Korean receipts and 10% of the Indian-operation receipts as taxable profits (paragraphs 2-4).

The Tribunal accepted best-judgment assessment and the Indian installation PE, excluded the Korean-operation profits, but reduced the Indian-operation profit percentage to 3%. Revenue's High Court appeal was summarily dismissed. The Supreme Court therefore addressed both attribution of the Korean operations and quantum of the Indian PE's profits (paragraphs 5-7).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished the taxable foreign company from its Indian PE, which was treated as a separate profit centre for attribution. Under Article 7 of the India–Korea treaty as quoted, only profits attributable to the PE were taxable in India, with the PE hypothesised as an independent enterprise. Domestic law applied only to the extent more beneficial within the treaty framework (paragraphs 7–11).

For Korean designing/fabrication and supply, the Court proceeded on delivery in Korea to ONGC's agents before the installation PE arose. Revenue had not alleged an earlier PE, non-arm's-length supply pricing, or that the offshore invoices contained consideration for PE services. Even integral supplies did not automatically become PE profits. The Court expressly stated that the supply-before-installation sequence was not an absolute rule: the economic connection with the PE and actual facts mattered. It upheld exclusion of the Korean profits under Article 7 (paragraphs 11–12).

For Indian installation, hook-up and commissioning, rejection of the accounts and completed-contract method was unchallenged. Hyundai itself had sought computation under section 44BB or CBDT Instruction 1767. With no adequate certified-work/cost particulars and no reason given by the Tribunal for 3%, the Court restored computation at 10% of the Indian-operation gross receipts. That figure measures taxable profits; it is not a 10% tax rate. The Court also held that substantial questions of law arose under section 260A, but declined remand in view of the age of the assessment years (paragraphs 13–14).

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

03 JUDICIAL DECISION

Both Department appeals were partly allowed without costs. The Korean designing/fabrication profits remained outside Indian taxation on these facts. For Indian installation, commissioning and related PE activities, the Court restored the CIT(A)'s 10% gross-receipts profit computation and set aside the Tribunal to that extent. It did not restore the CIT(A)'s separate 1% Korean-receipts computation. No remand was ordered (paragraphs 13–16).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed: assessee on Korean-operation profits; Revenue on Indian-operation quantum

Revenue's two civil appeals partly allowed; Tribunal reversed only to restore 10% Indian-operation profits; no costs or remand

Final on the two identified attribution/computation issues for AYs 1987-88 and 1988-89

Depends on the treaty, offshore delivery/PE sequence, absence of identified Revenue allegations, rejected accounts and the assessee's computation stance. The 10% is a profit measure for the specified Indian receipts, not a tax rate or universal offshore-contract rule. No blanket exemption of all offshore services or all income of a foreign company.

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

05 AKHB REVIEW POINT

Separate the question whether a PE exists from the amount properly attributed to it. Check the time of its formation, functions actually performed, offshore invoicing and whether supply consideration includes PE work. An integrated turnkey project alone does not answer these questions. The Court's supply-before-PE reasoning was expressly fact-sensitive and not an absolute chronology rule.

Keep the two outcomes distinct. Korean profits were excluded, but the Revenue appeals succeeded on the Indian profit percentage. Support any lower-profit computation with the necessary accounts and contract-costing evidence; this judgment is not a licence to treat 90% of every receipt, or income outside the special provision, as exempt. Paragraph 13's broad formulation must be read with the confined operative result in paragraph 15. Verify the applicable statutory, treaty and accounting versions for a later year; no later-treatment or present-law certificate is supplied.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, two appeals and assessment years

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: Cover; jurisdiction and connected appeal; 1-2

Source role: reported metadata and judicial text

2.

Topic: Facts, rejected accounts and first appeal

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: 2-4

Source role: judicial text

3.

Topic: Tribunal 3% computation and source chronology contradiction

Source url: [Open cited source](#)

Pdf pages: 4; 7; 8

Paragraphs: 2 and 5–6

Source role: judicial text

4.

Topic: Taxable enterprise and independent-PE attribution

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11

Paragraphs: 7–11

Source role: judicial text

5.

Topic: Korean profits, missing allegations and non-absolute PE chronology

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: 11–12

Source role: judicial text

6.

Topic: Indian computation and accounting/evidentiary limits

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: 13

Source role: judicial text

7.

Topic: Substantial question and precise mixed disposal

Source url: [Open cited source](#)

Pdf pages: 14

Paragraphs: 14–16

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

4 / 5(2) / 9: Foreign enterprise is the taxable person; Indian business profits require territorial and attribution analysis

India-korea treaty articles 5 / 7: PE and independent-enterprise attribution under the treaty version reproduced; no unrestricted force-of-attraction result

44bb / instruction 1767 dated 1 july 1987: Historical computation basis applied to the particular Indian installation, hook-up and commissioning receipts

143(2) / 144: Rejected accounts and best-judgment assessment history

260a: Substantial questions did arise, but the Supreme Court decided without a High Court remand

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 14 PDF pages; SHA-256

4eea1c2b6964eabe7c655873bfd8474176056eb3ceaaff695da608fd8e7f1fd7. Original bytes preserved.

Judicial paragraphs 1–16 on physical pages 4–14 (SCR 291–301), beginning after the reporter and counsel material on page 4.

Pages 1–3 and the opening of page 4 are editorial/report material. No adjacent judgment.

Open cited source rendition

The editorial headnote describes the Tribunal as using 10%, whereas judicial paragraphs 5 and 13 show that it used 3%; the Supreme Court restored 10%. The note follows the judicial text and ending.; Paragraph 2 reports installation from 1 November 1986 to 12 April 1987, but paragraph 5 reports delivery in Korea in September 1987 while describing that delivery as preceding the PE. The sequence is internally inconsistent; no corrected handover date is invented. The Court's own attribution premise is identified without reconstructing a calendar.; Paragraph 5 also contains the phrase was not divisible amid findings of divisibility. It is not used to reverse the clearly stated holding.; Paragraph 13 first prints Instruction No. 1967 and later No. 1767, while paragraphs 4–5 consistently use 1767 dated 1 July 1987. This is recorded as a source inconsistency; the instruction itself was not independently reviewed.; Paragraph 13's statement concerning the remaining 90% and receipts/gains outside section 44BB is not presented as a general exemption. The operative ruling fixes profits for the specified Indian operations.; Accounting Standard 7 and the two accounting methods are historical discussion in this record, not a present accounting-standard statement; no later statutory or judicial-treatment audit was performed.

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: 14

SHA-256: 4eea1c2b6964eabe7c655873bfd8474176056eb3ceaaff695da608fd8e7f1fd7

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