

Commissioner of Income Tax, Bangalore v. Infosys Technologies Ltd.

Civil Appeal No. 3725 of 2007 / Civil Appeal No. 17 of 2008 (arising from SLP(C) No. 16926 of 2007)

[2008] 1 SCR 136 | 2008-01-04

Whether the employer could be treated as a section 192 withholding defaulter for the assessed notional ESOP perquisite under the scheme and statutory versions applicable before 1 April 2000.

17(2)(iii) | 17(2)(iiia) (then later insertion considered) | 192 | 201(1) | 201(1A)

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

Assessment years: 1997-98, 1998-99, 1999-2000

Pre-April 2000 scheme only; later ESOP legislation checked

This rejects withholding-default treatment for the specific restricted scheme in AYs 1997-98 to 1999-2000. The Court expressly reserves later law; it does not make present ESOPs or all non-cash benefits tax-free. The checked official circular records a later securities-perquisite mechanism applicable from AY 2010-11. Source payment figures differ, and no fresh computation is supplied. Comprehensive later treatment and current-law mapping remain unverified.

01 FACTS OF THE CASE

Infosys implemented its employee stock-option scheme through a welfare trust holding warrants. An eligible employee paid Re 1 for a warrant, could exercise after a twelve-month minimum period by paying the remaining Rs 99, and received a share subject to five-year restrictions. Custody remained with the trust, transfer and pledge were barred, and departure from employment required retransfer for Rs 100. The stock exchange was notified of non-transferability (paragraph 2).

For the three assessment years, the AO treated market value on exercise less employee payments as a taxable perquisite and imposed salary-withholding default and interest consequences. The principal illustration used an approximately Rs 165 crore perquisite and Rs 49.52 crore withholding amount for AY 1999-2000. CIT(A) agreed; the Tribunal and High Court accepted the company's challenge. Revenue brought the two appeals (paragraphs 3-5).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court focused on valuation under the provisions then in force. A warrant was a right without an obligation to buy; grant and vesting did not guarantee exercise. At exercise the lock-in, trust custody, retransfer condition and inability to realise or pledge the shares made the alleged benefit notional and its value unascertainable on the method Revenue used. The AO could not simply ignore these restrictions and use an unrestricted quoted-market difference (paragraphs 6–11 and 16–18).

The Court rejected retrospective use of former section 17(2)(iiia), inserted with effect from 1 April 2000. That provision introduced specified-security, cost and value definitions and an exercise-linked mechanism; it was not treated as a mere clarification of the earlier years. The judgment also noted the clause's later deletion from 1 April 2001. The charge and computation framework had to support the levy in the actual years (paragraphs 12–15).

On the particular facts there was no basis to treat the employer as a section 192 defaulter, so sections 201(1) and 201(1A) did not apply as invoked. The Court explicitly withheld opinion on the law after 1 April 2000 beyond the aspects it discussed. Its recognition of no cash inflow in this scheme does not establish that all non-cash employment benefits escape tax (paragraphs 16–19).

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

03 JUDICIAL DECISION

Both Revenue appeals were dismissed without costs. The employer's withholding-default and consequential interest treatment for the identified historical scheme and years was rejected. No general adjudication of every employee's later share sale, later statutory ESOP regime or employer compensation deduction was made (paragraphs 18–20).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee employer

Both Revenue appeals dismissed; no order as to costs

Final on the disputed historical section 192/201 treatment for the restricted scheme

Pre-1 April 2000 years and specific restrictions/valuation deficiency. Not a present ESOP exemption, a cash-realisation condition for all perquisites, or an employer section 37 deduction ruling.

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

05 AKHB REVIEW POINT

Build a year-specific chronology of grant, vesting, exercise, allotment, restrictions and release. This decision turned on the actual restrictions and missing valuation mechanism in the earlier statutory scheme, not simply on the ESOP label. Keep employer withholding, employee perquisite charge, eventual capital gains and the employer's deduction question separate.

The later regime cannot be assumed unchanged. A bounded read of official CBDT Circular 5/2010 paragraph 42.2(a) records the later section 17(2)(vi) provision for employer-provided specified securities, using exercise-date fair market value less the amount paid or recovered, with paragraph 42.3 identifying AY 2010-11 applicability. This note does not audit all later valuation rules, startup deferrals or current/2025 provisions. That checked later explanation reinforces the judgment's express temporal limit.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and scheme

Source url: [Open cited source](#)

Pdf pages: 1; 5; 6

Paragraphs: Cover; connected appeal; 1–2

Source role: reported metadata and judicial text

2.

Topic: Restrictions and procedural result

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: 2–5

Source role: judicial text

3.

Topic: Valuation issue and historic provisions

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11

Paragraphs: 6–11

Source role: judicial text

4.

Topic: Non-retrospectivity and legislative mechanism

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13

Paragraphs: 12–16

Source role: judicial text

5.

Topic: Default consequence, express temporal reservation and dismissal**Source url:** [Open cited source](#)**Pdf pages:** 14**Paragraphs:** 17–20**Source role:** judicial text

6.

Topic: Bounded later statutory explanation**Source url:** [Open cited source](#)**Pdf pages:** 44**Paragraphs:** 42.2(a) and 42.3**Source role:** official CBDT explanatory circular

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

32952673a057e701d8b633bdab62465d124580aach19e5428e7fc5002b3a15b1. Original bytes preserved.

Complete judicial paragraphs 1–20, physical pages 6–14/SCR 141–149; preceding report/headnote excluded. No adjacent judgment.

[Open cited source rendition](#)

Two civil appeals are printed; the frozen metadata contains only the lead one. Three assessment years are narrated without an individual appeal-to-year allocation.; Paragraph 3 states employee payments of Rs 6.64 crore; paragraph 9 states Rs 6.46 crore. The market/perquisite/withholding figures are approximate and not arithmetically reconciled here.; Paragraph 8 says the appeal concerns value, not taxability; later paragraphs discuss the absence of the then legislative charge/computation. The note reports both in their historical setting rather than creating a timeless exemption.; The source uses both allotted shares and a later statement that shares could not be obtained before the lock-in ended. The factual restrictions on custody, transfer and retransfer are stated without inventing an ownership-date holding.; The headnote's opening section 20 reference is not an independently adjudicated section; the judicial default provisions are 201(1) and 201(1A).

STATUTORY SCOPE

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

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: 14](#)

SHA-256: 32952673a057e701d8b633bdab62465d124580aacb19e5428e7fc5002b3a15b1

[official bounded statutory explanatory circular - PDF pages: 63](#)

SHA-256: ff5bec3a925019cd8bbcc09d7578e6cdcd202b8b3877852b156d6be76bccea9

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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.

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