

Pradip J. Mehta v. Commissioner of Income-Tax, Ahmedabad

Civil Appeal No. 4291 of 2002

[2008] 6 SCR 383 | 2008-04-11

Whether, under the section 6(6)(a) text governing AY 1982-83, ordinary residence required both residence in nine of the ten preceding previous years and at least 730 days in India in the seven preceding previous years.

6(6)(a) | 5(1)(c), proviso | 6(1) | 256(1)

Two-judge bench | Ashok Bhan, J. | Dalveer Bhandari, J.

Assessment years: 1982-83

AY 1982-83 rule; amendment quotation and factual recitals need care

This is a pre-1 April 2004 residence decision. The later substituted wording differs, although paragraph 23 of this SCR rendition repeats the older text when introducing the amendment. The reported nine-row table supports 1,402 Indian days, but year-status recitals differ and do not permit a reconstructed complete ten-year computation. The appeal was allowed on status; no tax or refund amount was fixed. Foreign-income exclusions remain subject to the quoted statutory exception. Current law and comprehensive later treatment are unverified.

01 FACTS OF THE CASE

The assessee, a marine engineer employed by Wallem Shipping Management Ltd., Hong Kong from 5 October 1976, worked on the high seas and was paid abroad. For AY 1982-83 he claimed resident-but-not-ordinarily-resident status and exclusion of foreign-accruing income under section 5(1)(c). The Assessing Officer rejected the claim on the basis that he had been non-resident for only three years and had spent more than 730 days in India in the preceding seven years (paragraphs 2–8).

The reported table lists 91, 62, 272, 50, 197, 365 and 365 days for FYs 1980-81 back to 1974-75, totalling the stated 1,402 days, plus 365 days each for FYs 1973-74 and 1972-73. The table has nine rows, not a complete ten-year status schedule. CIT(A) and the Tribunal dismissed the appeals; the Gujarat High Court answered two referred status/interpretation questions for Revenue. Its quoted account of residence in eight out of ten years differs from the Assessing Officer's three-non-resident-years narration. The Supreme Court nevertheless treated the failure to have been resident in nine of ten preceding years as the material factual premise (paragraphs 6–12).

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

02 DISCUSSION BY THE HON'BLE COURT

The disputed historical wording could not be read as requiring nine years of non-residence before resident-but-not-ordinarily-resident status was available. Ordinary residence required both residence in nine of the ten preceding previous years and presence in India for at least 730 days in the seven preceding previous years. Failure of either condition was sufficient for the historical resident-but-not-ordinarily-resident classification. The finding of 1,402 days therefore did not cure failure of the nine-of-ten-resident-years condition. Basic residence and ordinary residence are separate questions; the result does not convert every non-resident into a resident but not ordinarily resident (paragraphs 17–20 and 29–30).

The Court agreed with the identified Patna, Bombay and Travancore-Cochin authorities, drawing on the materially corresponding section 4B of the 1922 Act. It treated legislative retention of that provision's substance and the historical departmental circular as support, and invoked the taxpayer-favouring construction where two taxing interpretations were available. It also criticised the High Court's failure to give reasons for departing from the persuasive authorities. Those decisions of other High Courts were not declared formally binding on it (paragraphs 21–22 and 24–28).

The Finance Act 2003 substitution was expressly held inapplicable to this case because its effective date was 1 April 2004. The SCR quotation introduced as that amendment in paragraph 23 repeats the old wording; the Court's temporal limitation is clear, but that quotation cannot safely be used as a statement of the substituted text. The actual old/new wording comparison is separately documented from the official statutory page (paragraphs 23 and 26; bounded statutory check).

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

03 JUDICIAL DECISION

The assessee's appeal was allowed. The High Court judgment and orders of the authorities below were set aside, and both referred questions were answered for the assessee and against Revenue, without costs. The assessee obtained the claimed historical residence-status ruling. The Court did not quantify excluded salary, recompute total income or tax, order a specified refund, or direct a fresh factual day-count remand (paragraphs 29–30).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Appeal allowed; High Court and lower-authority orders set aside; both reference questions answered for the assessee; no costs

Final on the resident-but-not-ordinarily-resident classification and interpretation for AY 1982-83; no monetary assessment computation in the judgment

The nine-of-ten-resident-years formulation interprets the old statutory wording. It must not be applied mechanically to years governed by the substitution effective 1 April 2004. The source does not supply a complete reconciled ten-year schedule, a present residence test or a blanket exemption for all foreign receipts.

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

05 AKHB REVIEW POINT

Fix the assessment year and statutory version before applying a residence precedent. For this pre-amendment case, more than 730 Indian days did not independently make the assessee ordinarily resident when the nine-of-ten-resident-years condition failed. Verify basic residence first, then the additional ordinary-residence test; the categories should not be collapsed. Preserve the section 5 proviso's exception for foreign income derived from a business controlled in, or a profession set up in, India.

The independently checked Income Tax Department page labelled 2009 states the substituted nine-years-non-resident/729-days-or-less formulation and identifies its 1 April 2004 commencement in footnote 51. That bounded check demonstrates why paragraph 23's printed quotation and this historical ratio cannot substitute for a later-year statute. It does not certify present law, every intervening amendment or comprehensive judicial treatment. The reported 1,402-day total is supportable from the table; the conflicting year-status recitals cannot be reconciled by inventing missing travel data.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, relevant year, employment and claimed status

Source url: [Open cited source](#)

Pdf pages: 1; 5; 6

Paragraphs: Cover; 1–6

Source role: reported metadata and judicial text

2.

Topic: Day-count table, 1,402-day total and rejected lower interpretation

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Paragraphs: 7–12

Source role: judicial text

3.

Topic: Historical predecessor, cited authorities and two-condition construction

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12; 13; 14; 15

Paragraphs: 13–22

Source role: judicial text

4.

Topic: Amendment timing, incorrect printed quotation and reasoned departure requirement

Source url: [Open cited source](#)

Pdf pages: 15; 16; 17

Paragraphs: 23–27

Source role: judicial text

5.

Topic: Circular discussion, historical test and final relief

Source url: [Open cited source](#)

Pdf pages: 17; 18

Paragraphs: 28–30

Source role: judicial text

6.

Topic: Bounded old/new statutory wording comparison

Source url: [Open cited source](#)

Paragraphs: Section 6(6)(a); footnote 51 and prior-text quotation; page label Year 2009

Source role: official statutory html comparison

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

6(6)(a): Construction of the pre-1 April 2004 wording for AY 1982-83

6(1): Basic residence classification is distinct from ordinary residence; this decision does not supply a new day-count computation under every basic-residence limb

5(1)(c), proviso: Scope consequence for foreign-accruing income of a not-ordinarily-resident person, preserving the Indian-controlled-business/Indian-set-up-profession exception

256(1): Historical reference procedure, through which the two status/interpretation questions reached the High Court

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Ashok Bhan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

COMPARISON OF DISTINCT HISTORICAL STATUTORY SETTINGS

1.

Kind: historical statutory version check

Source url: [Open cited source](#)

Actually checked: Official page labelled Income-tax Act, 1961, Year 2009: section 6(6)(a), footnote 51 and its prior-text quotation

Finding: The page prints the substituted non-resident-in-nine-of-ten-years or 729-days-or-less text, identifies Finance Act 2003 substitution effective 1 April 2004, and separately prints the old wording. This confirms the paragraph 23 rendition discrepancy and the need to confine the holding to the old provision.

Limit: No later judicial-treatment search or present-law/2025-Act mapping certification.

SOURCE & VERIFICATION

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

Identified source rendition: 18 PDF pages; SHA-256

e9d68c708e6848cb81b4a116be7fe1b03ee4b83a2dc31bb0525660036d897fec. Original bytes preserved.

Judicial paragraphs 1–30 on physical pages 5–18 (SCR 387–400), including the nine-row days-in-India table on page 7 and the disputed statutory quotation on pages 15–16. Pages 1–4 and opening of page 5 are reporter/editorial material. Paragraph 12 quotes the rejected High Court reasoning; paragraphs 13 and 17–22 reproduce cited authorities/history. No adjacent judgment.

[Open cited source rendition](#)

The cover headnote's shorthand about first asking whether the individual is resident can blur the distinct basic-residence and ordinary-residence inquiries. The note relies on the judicial discussion and operative answer instead.; Paragraphs 7–8 report three non-resident years; the rejected High Court passage in paragraph 12 describes residence in eight of ten years. These recitals are not silently harmonised. The nine-row day table omits a complete ten-year status schedule.; The first seven rows of the reported table sum to 1,402 days (91 + 62 + 272 + 50 + 197 + 365 + 365). No salary, income-tax or refund amount is quantified by the Supreme Court.; Paragraph 23, physically checked on pages 15–16, introduces the 2003 substitution but prints the pre-substitution wording. The official statutory page's labelled 2009 text and footnote 51 distinguish the two versions. The original PDF is preserved unchanged.; The foreign-income shorthand in the introductory narrative is qualified by the full section 5(1)(c) proviso quoted in paragraph 5; the Indian-controlled-business/Indian-set-up-profession exception is preserved.; Section 4B is the 1922 Act predecessor discussed; some extracted text renders the letter B as 8. The quoted earlier judgments and historical circular were not independently read in full or verified as present departmental policy.

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. Embedded precedents are read as reproduced in the reviewed judgment, not independently certified. Any actual external comparison is separately bounded; no current-law or 2025-Act certification.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 18](#)

SHA-256: e9d68c708e6848cb81b4a116be7fe1b03ee4b83a2dc31bb0525660036d897fec

[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.

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