

R & B Falcon (A) Pty. Ltd. v. Commissioner of Income Tax

Civil Appeal No. 3326 of 2008

[2008] 7 SCR 804 | 2008-05-06

Whether the historical section 115WB(3) transport exclusion extended to deemed benefits under subsection (2), and whether overseas residence by itself disqualified home-to-rig travel from the exclusion.

115WA | 115WB(1)(a) | 115WB(2)(F) | 115WB(2)(Q) | 115WB(3) | 245Q(1)

Two-judge bench | S.B. Sinha, J. | V.S. Sirpurkar, J.

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

Historical FBT ruling; partial relief and factual eligibility reserved

This decision preserves the subsection (1)/(2) distinction and rejects an India-only meaning of residence, but does not finally exempt all of the company's travel expenditure. Actual eligibility remains for assessment. The SCR title prints PVT. while the comparison header uses Pty; the HTML page also appends an unrelated mortgage judgment and misattributes the bench at page level. Use the clean SCR boundary and its bench. Current law, comprehensive later treatment and 2025-Act mapping are unverified. The checked CBDT Circular 5/2010 records employer-FBT abolition from AY 2010-11; replacement salary rules are a separate inquiry.

01 FACTS OF THE CASE

The Australian company supplied a mobile offshore drilling rig with crew on day-rate charter hire, including under an ONGC contract dated 10 October 2003. The rig operated up to 200 nautical miles off India. It described specialist crew working 28 days on the rig followed by 28 days in their home country. It provided economy air tickets from the designated home-country base city to a designated Indian city and hired helicopter transport onward to the rig, with the return journey arranged similarly. It said no transport allowance was paid (paragraphs 3–4).

Its section 245Q(1) application asked whether the cost of bringing offshore employees from their home-country residence to work and back attracted FBT. The AAR ruling of 13 December 2006 treated subsection (3) as confined to subsection (1), and read residence as residence in India, holding the company liable. The Supreme Court reviewed those legal propositions while retaining the distinction between the narrated arrangements and evidence needed to decide actual expenditure eligibility (paragraphs 4, 9 and 28).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court rejected the argument that subsection (3) extended to all subsection (2) categories. The direct employment benefits in subsection (1) and the expanded, deemed benefits in subsection (2) operated in different fields; the text of subsection (3) referred only to subsection (1). At the same time, necessary air-ticket provision to these specialist employees could be consideration for employment within subsection (1)(a). Home-to-work transport, whether directly provided or reimbursed, was not confined to the conveyance/travel labels in subsection (2). Otherwise the express exclusion would lose meaningful operation (paragraphs 13–19).

Residence was not limited to India. The company carried on business and had a permanent establishment in India, and bringing employees from abroad could fall within subsection (1). The AAR could not insert an India-only condition into subsection (3). Eligibility nevertheless required expenditure directly for the specified residence-to-work or work-to-residence journey; expenditure for another purpose would not qualify, and the assessing authority could scrutinise the claim (paragraphs 20–22).

The Court discussed the weight of contemporaneous CBDT/executive construction, subject to statute and judicial authority. Its quotation of Sedco Forex concerned a different salary-accrual and retrospective-explanation issue, not a determination of these employees' salary liability. On the asserted regularity requirement and the particular nature of the travelling expenditure, the AAR lacked the necessary issue and evidentiary foundation. Those factual applications were left for the assessing authority (paragraphs 22–28).

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

03 JUDICIAL DECISION

The appeal was allowed only to the stated extent, with no order as to costs. The subsection (1)/(2) distinction was sustained and the India-only residence restriction rejected. Actual eligibility/liability on the employees' agreements and expenditure evidence remained for determination by the assessing authority; the Supreme Court did not grant a quantified exemption or pronounce every overseas rotational journey exempt (paragraphs 19–22 and 28–29).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Partly in favour of the assessee; mixed legal result, with factual tax eligibility reserved

Appeal partly allowed to the stated extent and observations; no costs; factual application left to the assessing authority

Final interpretation of the identified historical FBT provisions; actual agreement/expenditure eligibility not finally adjudicated

Section 115WB(3) applies to subsection (1), not deemed benefits under subsection (2). Foreign residence alone does not disqualify the specified transport. This is neither blanket exemption for all travel nor a salary/perquisite-tax ruling for present law.

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

05 AKHB REVIEW POINT

Identify the legal route before applying the exclusion: a direct employment amenity under subsection (1) cannot be treated as interchangeable with the deemed-expenditure categories under subsection (2). Then prove the journey's endpoints, employment nexus, actual provision or reimbursement and purpose. Foreign residence is not itself fatal, but the judgment leaves the factual claim open.

Keep this historical employer-FBT dispute separate from employee salary accrual, personal journeys, allowances under another regime and the quoted CBDT FAQs on unrelated topics. Verify the applicable year's legislation and subsequent treatment before reuse; this review gives no current-law or Income-tax Act, 2025 mapping certificate.

A bounded official comparison confirms the temporal limit: CBDT Circular 5/2010 paragraphs 42.1–42.3 describes section 115WM abolishing employer FBT with effect from AY 2010-11 and separate employee-perquisite changes. The 2008 holding is not a present employer-FBT charge or a conclusion on exemption under the replacement salary rules.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, bench and judicial start

Source url: [Open cited source](#)

Pdf pages: 1; 7

Paragraphs: Cover; jurisdiction; 1–3

Source role: reported metadata and judicial text

2.

Topic: Employment rotation, transport arrangements and AAR question

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: 3–4

Source role: judicial text

3.

Topic: Historical provisions and quoted circular

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10; 11; 12; 13; 14

Paragraphs: 5–8

Source role: judicial text with quoted statute and circular

4.

Topic: AAR reasoning and opposing submissions

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: 9–11

Source role: reported lower order and counsel submissions

5.

Topic: Separate fields and direct employment transport

Source url: [Open cited source](#)

Pdf pages: 16; 17; 18; 19; 20

Paragraphs: 12–19

Source role: judicial text

6.

Topic: No India-only residence limitation; actual-purpose scrutiny

Source url: [Open cited source](#)

Pdf pages: 20; 21

Paragraphs: 20–22

Source role: judicial text

7.

Topic: Executive construction and distinct salary precedent

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23

Paragraphs: 22–27

Source role: judicial text with quoted precedents

8.

Topic: Reserved factual application and partial disposition

Source url: [Open cited source](#)

Pdf pages: 23; 24

Paragraphs: 28–29

Source role: judicial text

9.

Topic: Bounded title comparison and excluded adjacent judgment

Source url: [Open cited source](#)

Paragraphs: Reproduced Falcon case header; Falcon paragraph 29; immediately following Lachhman Singh / Civil Appeal 3322 of 2008 header

Source role: bounded html identity and boundary comparison

10.

Topic: Bounded later abolition of employer FBT

Source url: [Open cited source](#)

Pdf pages: 43; 44

Paragraphs: 42.1–42.3

Source role: official CBDT explanatory circular

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

115wa / 115wb: Historical employer fringe-benefit-tax charge, direct employment benefits, deemed expenditure categories and the residence-to-work transport exclusion

245q(1): Procedural basis of the advance-ruling application

9(1)(ii) / 119: Discussion of the quoted Sedco Forex salary decision and executive construction; no independent salary-tax ruling in this appeal

115wc / 40(a)(ic) / 115jb: Appear in quoted CBDT FAQs; the Court did not separately decide a valuation or MAT-deduction dispute

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.B. Sinha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SAME-JUDGMENT SOURCE COMPARISONS AND BOUNDARIES

1.

Type: same judgment identity and boundary only

Source url: [Open cited source](#)

Finding: The reproduced Falcon header uses Pty Ltd. and names S.B. Sinha and V.S. Sirpurkar. After paragraph 29 the page begins Lachhman Singh, Civil Appeal 3322/2008. Its top-level Bench field instead names Lokeshwar Singh Panta. The SCR PDF supplies the bench and clean boundary used here.

Not a later treatment check: True

SOURCE & VERIFICATION

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

Identified source rendition: 24 PDF pages; SHA-256

82b88a891c20e76ae0ed43fe1976307f2d25a2cb69c27cb287e00a73623cca9a. Original bytes preserved.

Judicial paragraphs 1–29 on physical pages 7–24 (SCR 810–827). Pages 1–6 and page 7 above the author line are reporter/editorial material. Quoted Circular No. 8/2005 occupies paragraphs 7–8; counsel submissions are paragraphs 10–11. No adjacent judgment in this PDF.

Open cited source rendition

No individual assessment year is specified for determination in this advance-ruling appeal. The judgment describes the historical FBT regime commencing 1 April 2006; that commencement date is not an adjudicated assessment-year finding.

The SCR source prints PVT. LTD.; the bounded HTML case header uses Pty Ltd. The chosen title is accompanied by the source-title variant; The HTML comparison appends Lachhman Singh, Civil Appeal 3322/2008, after Falcon paragraph 29. Its top-level bench metadata names Lokeshwar Singh Panta, conflicting with the Falcon reproduced header and SCR cover, which name V.S. Sirpurkar. Do not import the appended mortgage case or its bench, citations or relief; Paragraphs 7–8 reproduce selected CBDT circular/FAQ material; paragraphs 10–11 report opposing counsel submissions. They are not all independently adopted holdings; The source describes an alleged 28-day rotation and no transport allowance. Paragraph 28 expressly reserves the evidentiary application; these facts do not amount to a finding that every expenditure qualified; The printed judicial paragraph 22 contains an incomplete subsection reference. The operative distinction is anchored in paragraphs 13–19 and 21 rather than supplying an unmarked textual correction; Sedco Forex and overseas field-break salary taxation are discussed as an interpretive comparison, not decided afresh here.

The SCR cover/running title prints PVT. LTD.; the bounded reproduced case header in the listed HTML comparison uses Pty Ltd. Both identify Civil Appeal No. 3326 of 2008 dated 6 May 2008. The variant is preserved rather than silently treating the source typography as authoritative corporate nomenclature.

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. Same-judgment identity or boundary comparisons, where actually checked, are separately described and are not later-treatment verification. No current-law or 2025-Act certification.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 24](#)

SHA-256: 82b88a891c20e76ae0ed43fe1976307f2d25a2cb69c27cb287e00a73623cca9a

[bounded same judgment html comparison](#)

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

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