

Commissioner of Income-tax, New Delhi v. M/s Eli Lilly & Company (India) Pvt. Ltd.

Civil Appeal No. 5114 of 2007 and connected proceedings (full list below)

[2009] 5 SCR 20 | 2009-03-25

Whether home salary and special allowances paid abroad by foreign companies/head offices for expatriates' India services fall within the salary-withholding obligation, and how underlying tax, interest and penalty must then be treated separately.

4 | 5(2)(b) | 9(1)(ii) and Explanation | 15 | 40(a)(iii) | 190 | 191 | 192(1) | 192(2) | 201(1) | 201(1A) | 271C(1)(a) | 273B

Two-judge bench | S.H. Kapadia, J. | Aftab Alam, J.

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

India-service salary only; split tax, interest and penalty result

The Department's appeals were only partly allowed. Salary chargeability and withholding depend on the India-services nexus; tax already paid by the employee must not be recovered again, while interest for the earlier default period is checked separately. All section 271C penalties in this batch were quashed on the proved, then-nascent-issue reasonable cause, not a universal exemption. The judgment states 104 appeals, but the SCR list duplicates CA 1346/2007; an alternate header shows CA 1348/2007. The full discrepancy must remain visible. Financial years must not be relabelled assessment years. Current law and comprehensive later treatment remain unverified.

01 FACTS OF THE CASE

The lead company, an Indian pharmaceutical joint venture associated with Ranbaxy and the foreign Eli Lilly company, employed four seconded expatriates during the stated financial years 1992-93 to 1999-00. It deducted tax on remuneration paid in India but not on home salary paid abroad in foreign currency while the employees remained on the foreign company's rolls. Following a section 133A survey, the AO found that the expatriates performed no work for the foreign company and that the entire remuneration related to services in India. The AO treated the Indian deductor as in default and levied interest. The Tribunal and Delhi High Court rejected that obligation on the foreign-paid portion; Revenue appealed (paragraphs 4–7).

The common batch also included foreign-head-office special allowances and appeals from deletion of section 271C penalties. Ericsson's CA 4082/2007 involved child-education payments abroad; Mitsui's CA 5152/2005 was presented as a penalty appeal concerning retention/continuation payments in Japan to expatriates deputed to Indian establishments. Assertions about separate employers, tax already paid, and an understanding with the Department are recorded as submissions, not converted into uniform proved facts across all 104 appeals (paragraphs 8 and 13–19).

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

02 DISCUSSION BY THE HON'BLE COURT

Chargeability and territorial nexus. The Court expressly confined its judgment to income chargeable as salary and section 192(1), which operates on estimated salary income. It rejected the proposition that collection machinery can be isolated from the charge and computation provisions. Sections 4, 5 and 9(1)(ii), including the Explanation equating salary earned in India with services rendered in India, supply the necessary charge and territorial connection. Payment abroad does not by itself remove salary for India services from that framework. The extraterritorial discussion depends on a sufficient nexus; it is not a declaration that all foreign payments are taxable (paragraphs 21–30).

Withholding. Section 192(1) must be read with section 9(1)(ii). Whether the foreign-paid component is salary deemed to accrue in India requires examination of each case's facts. In the lead case the findings that no work was done for the foreign company and all remuneration related to India services brought the home salary within the respondent's withholding obligation. Non-claim of the foreign salary as the Indian employer's business deduction did not, by itself, erase that obligation. The Court did not adopt counsel's broad joint-and-several-liability formulation as a separate rule governing every multiple-employer situation (paragraphs 31–33 and 36).

Tax recovery and interest. Sections 201(1) and 201(1A) operate without prejudice to each other. The underlying employee tax liability is primary; the deductor's liability is vicarious. Section 201(1) recovers the tax or shortfall still unpaid. Interest is compensatory and mandatory for the relevant default, but must be computed on the tax in default, at the applicable statutory rate, only from when tax was deductible until actual payment. The employee's own payment can end that period. Thus payment of the principal tax can bar duplicate recovery while leaving interest for an earlier delay to be examined; it does not create interest on non-chargeable income (paragraphs 34, 36–37).

Penalty and reasonable cause. Section 271C(1)(a) is subject to section 273B; penalty is not automatic and the deductor bears the burden of showing reasonable cause. The Court found that burden discharged in each of the stated 104 cases: the salary-aggregation question was then nascent and controversial, the deductors held a genuine bona fide view, many had not claimed the foreign salary deduction, and in some cases employees had paid their taxes directly. Those findings supported relief in this batch, rather than a permanent immunity based simply on labelling a question debatable (paragraph 35).

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

03 JUDICIAL DECISION

The Department's civil appeals were partly allowed without costs, subject to the directions. The respondent deductors were held obliged to withhold on the chargeable foreign-paid salary/special allowances for India services on the stated facts. For each of the 104 appeals, the AO must ascertain whether the recipient has already paid the tax: if so, no section 201(1) recovery is to proceed; otherwise only the unpaid shortfall is recoverable. The AO must separately check whether interest has been paid/recovered for the deductibility-to-actual-payment period, and the adjudicating authority must recover any interest due for that period. All section 271C penalty proceedings in these cases were quashed and no such penalty proceedings were to be taken. The Court gave case-wise examination and recovery directions, not a final quantified demand for each assessee or an unrestricted reopening of the penalty issue (paragraphs 36–39).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed: Revenue on the salary-withholding principle; respondent deductors on penalty relief and protection against duplicate principal-tax recovery

Department appeals partly allowed; individual AO/adjudicating-authority checks directed for tax shortfall and interest; section 271C penalty proceedings quashed in the entire stated batch; no costs

Legal withholding principle and penalty relief decided; case-specific tax-payment facts, recoverable shortfalls and unpaid compensatory interest left for examination under the directions

Strictly the salary-withholding issue on the India-services nexus and the historical provisions considered. Does not impose withholding on wholly non-chargeable foreign payments, resolve every unrelated multiple-employer arrangement or treaty question, fix a universal current interest rate, or excuse later defaults automatically. The source's stated 104 appeals and duplicated roster identifier must be disclosed.

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

05 AKHB REVIEW POINT

Maintain four separate questions in an expatriate payroll review: why each pay component is chargeable in India; who must account for it under the salary-withholding provision; what employee tax and default-period interest have actually been paid; and whether evidence establishes reasonable cause for a distinct penalty issue. Trace services, contracts, assignment records and the foreign-paid component instead of treating the place or currency of payment as decisive. Obtain employee-level payment evidence before asserting a section 201 principal demand, and compute the historical interest period independently.

The important publication distinction is that Revenue's success on withholding coexists with final penalty relief and conditional recovery directions. Neither "Revenue won everything" nor "no tax deduction was required" describes the decision. The Court's then-nascent-issue reasoning is contextual. Check the relevant-year statutory version, treaty facts and later treatment before applying the case today; this note does not certify current law or an automatic Income-tax Act, 2025 counterpart.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 5114 of 2007 / Civil Appeal No. 5152 of 2005 / Civil Appeal No. 1775 of 2006 / Civil Appeal No. 1782 of 2006 / Civil Appeal No. 1776 of 2006 / Civil Appeal No. 1778 of 2006 / Civil Appeal No. 1780 of 2006 / Civil Appeal No. 1786 of 2006 / Civil Appeal No. 1783 of 2006 / Civil Appeal No. 1785 of 2006 / Civil Appeal No. 1787 of 2006 / Civil Appeal No. 1789 of 2006 / Civil Appeal No. 1791 of 2006 / Civil Appeal No. 1792 of 2006 / Civil Appeal No. 1793 of 2006 / Civil Appeal No. 1794 of 2006 / Civil Appeal No. 1795 of 2006 / Civil Appeal No. 1796 of 2006 / Civil Appeal No. 1784 of 2006 / Civil Appeal No. 1920 of 2006 / Civil Appeal No. 2187 of 2006 / Civil Appeal No. 2211 of 2006 / Civil Appeal No. 2210 of 2006 / Civil Appeal No. 2480 of 2006 / Civil Appeal No. 5263 of 2006 / Civil Appeal No. 5646 of 2006 / Civil Appeal No. 107 of 2007 / Civil Appeal No. 347 of 2007 / Civil Appeal No. 161 of 2007 / Civil Appeal No. 159 of 2007 / Civil Appeal No. 156 of 2007 / Civil Appeal No. 352 of 2007 / Civil Appeal No. 428 of 2007 / Civil Appeal No. 434 of 2007 / Civil Appeal No. 342 of 2007 / Civil Appeal No. 344 of 2007 / Civil Appeal No. 343 of 2007 / Civil Appeal No. 345 of 2007 / Civil Appeal No. 346 of 2007 / Civil Appeal No. 349 of 2007 / Civil Appeal No. 816 of 2007 / Civil Appeal No. 1346 of 2007 / Civil Appeal No. 1357 of 2007 / Civil Appeal No. 1345 of 2007 / Civil Appeal No. 1355 of 2007 / Civil Appeal No. 1352 of 2007 / Civil Appeal No. 1351 of 2007 / Civil Appeal No. 1354 of 2007 / Civil Appeal No. 1346 of 2007 / Civil Appeal No. 1343 of 2007 / Civil Appeal No. 2295 of 2007 / Civil Appeal No. 2293 of 2007 / Civil Appeal No. 1634 of 2007 / Civil Appeal No. 1956 of 2007 / Civil Appeal No. 1948 of 2007 / Civil Appeal No. 1943 of 2007 / Civil Appeal No. 1939 of 2007 / Civil Appeal No. 1961 of 2007 / Civil Appeal No. 2121 of 2007 / Civil Appeal No. 2294 of 2007 / Civil Appeal No. 2292 of 2007 / Civil Appeal No. 4173 of 2007 / Civil Appeal No. 4516 of 2007 / Civil Appeal No. 4517 of 2007 / Civil Appeal No. 3212 of 2007 / Civil Appeal No. 3124 of 2007 / Civil Appeal No. 3126 of 2007 / Civil Appeal No. 5110 of 2007 / Civil Appeal No. 5111 of 2007 / Civil Appeal No. 264 of 2008 / Civil Appeal No. 293 of 2008 / Civil Appeal No. 292 of 2008 / Civil Appeal No. 4477 of 2007 / Civil Appeal No. 4082 of 2007 / Civil Appeal No. 1037 of 2008 / Civil Appeal No. 3523 of 2007 / Civil Appeal No. 1462 of 2008 / Civil Appeal No. 5288 of 2007 / Civil Appeal No. 5295 of 2007 / Civil Appeal No. 5986 of 2007 / Civil Appeal No. 5742 of 2007 / Civil Appeal No. 5749 of 2007 / Civil Appeal No. 3587 of 2008 / Civil Appeal No. 3616 of 2007 / Civil Appeal No. 1769 of 2006 / Civil Appeal No. 1890 of 2009 / Civil Appeal No. 1891 of 2009 / Civil Appeal No. 1892 of 2009 / Civil Appeal No. 1893 of 2009 / Civil Appeal No. 1894 of 2009 / Civil Appeal No. 1895 of 2009 / Civil Appeal No. 1896 of 2009 / Civil Appeal No. 1897 of 2009 / Civil Appeal No. 1898 of 2009 / Civil Appeal No. 1899 of 2009 / Civil Appeal No. 1900 of 2009 / Civil Appeal No. 1901 of 2009 / Civil Appeal No. 1902 of 2009 / Civil Appeal No. 1903 of 2009 / Civil Appeal No. 1906 of 2009 / Civil Appeal No. 1907 of 2009 / Civil Appeal No. 1904 of 2009 / Civil Appeal No. 1905 of 2009 / Civil Appeal No. 1908 of 2009

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench and full SCR roster

Source url: [Open cited source](#)

Pdf pages: 1; 10; 11; 12

Paragraphs: Cover; jurisdiction and appeal list; 1–3

Source role: reported metadata and judicial text

2.

Topic: Lead payroll facts and lower orders

Source url: [Open cited source](#)

Pdf pages: 13; 14

Paragraphs: 4–8

Source role: judicial text

3.

Topic: Companion submissions, including Ericsson and Mitsui

Source url: [Open cited source](#)

Pdf pages: 20; 21; 22; 23; 24; 25; 26; 27

Paragraphs: 14–19

Source role: recorded party submissions

4.

Topic: Rest/leave wording discrepancy: submission versus quoted statute

Source url: [Open cited source](#)

Pdf pages: 24; 28; 29

Paragraphs: 17; Relevant Provisions before 20

Source role: recorded submission and quoted statute

5.

Topic: Express salary-only boundary and integrated-code reasoning

Source url: [Open cited source](#)

Pdf pages: 33; 34; 35; 36; 37; 38; 39; 40

Paragraphs: 20–30

Source role: judicial text

6.

Topic: Section 192 scope and fact-dependent India-services finding

Source url: [Open cited source](#)

Pdf pages: 41; 42; 43

Paragraphs: 31–33

Source role: judicial text

7.

Topic: Separate tax recovery and interest period

Source url: [Open cited source](#)

Pdf pages: 43; 44

Paragraphs: 34

Source role: judicial text

8.

Topic: Reasonable cause and all-batch penalty relief

Source url: [Open cited source](#)

Pdf pages: 44; 45

Paragraphs: 35

Source role: judicial text

9.

Topic: Case-wise tax/interest directions and final disposition

Source url: [Open cited source](#)

Pdf pages: 46; 47

Paragraphs: 36–39

Source role: judicial text

10.

Topic: Alternate header variant, not a corrected certified roster

Source url: [Open cited source](#)

Paragraphs: Header and opening appeal roster before judicial text

Source role: bounded same judgment header comparison

11.

Topic: Official contemporaneous identity corroboration

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: Court News item 11, printed page 13

Source role: official nonjudicial summary

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

4 / 5 / 9(1)(ii) / 15: Chargeability and the India-services nexus for salary, including home salary received abroad; section 192 is not an independent charge.

192(1): Estimated chargeable salary and the withholding obligation on the respondent tax-deductors on the facts found; the judgment expressly limits its holding to salary withholding.

192(2): Competing submissions on multiple employers and employee selection were recorded; no free-standing universal joint-and-several rule for every unrelated employer is extracted from Revenue counsel's submission.

40(a)(iii): Illustration of integration of charge/computation/collection, and non-claim of deduction as part of the factual reasonable-cause analysis; not an independent current disallowance decision.

201(1): Recovery only of tax still unpaid, with employee-level checks required; no second recovery of tax already paid by the salary recipient.

201(1a): Compensatory interest independently examined for the period from when tax was deductible to actual payment, which may be payment by the employee.

271c(1)(a) / 273b: Failure to deduct, subject to proved reasonable cause. Penalty proceedings in the batch quashed; not a ruling that all TDS defaults or all delayed remittances automatically escape penalty.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

COMPARISON OF DISTINCT HISTORICAL STATUTORY SETTINGS

1.

Type: same judgment roster variant

Source url: [Open cited source](#)

Actually checked: Header before the judicial text; CA 1348/2007 appears after CA 816/2007, while CA 1346/2007 is separately present later.

Limit: Identifies a rendition discrepancy; does not certify a corrected official roster or change the merits.

2.

Type: contemporaneous official identity corroboration

Source url: [Open cited source](#)

Actually checked: Court News item 11 on printed page 13 / physical page 15.

Limit: Official summary only; not a second judicial holding and not a later-treatment audit.

APPEAL ROSTER AND SOURCE-VARIANT AUDIT

Judgment stated appeal count: 104

Scr expanded number occurrences: 104

Scr distinct identifiers: 103

Scr duplicate identifier: Civil Appeal No. 1346 of 2007

Scr counts by year including duplicate

2005: 1

2006: 25

2007: 53

2008: 6

2009: 19

Scr companion range: Civil Appeal Nos. 1890–1908 of 2009 (19 numbers, printed in non-numeric order near the end)

Alternate header variant: Civil Appeal No. 1348 of 2007 instead of the first printed Civil Appeal No. 1346 of 2007

Alternate header source url: [Open cited source](#)

Status: primary roster preserved with disclosed variant

IDENTIFIED LOWER-COURT ORDER AND SCOPE

Court: High Court of Delhi at New Delhi

Decision date: 2006-11-08

Case number: ITA No. 1034 of 2006

Scope: Lead appeal jurisdiction recital on SCR29 / physical page10; not a date for every companion lower order.

DISTINCT APPEAL GROUPS AND THEIR SCOPE

1.

Group: Common batch

Count as stated by court: 104

Scope: One common judgment. All appeals subject to paragraphs36–39; no separate appeal-by-appeal quantified tax or interest schedule is supplied.

2.

Group: Lead Eli Lilly withholding/default appeal

Case numbers: Civil Appeal No. 5114 of 2007

Scope: Detailed factual findings in paragraphs4–7 and33; AO verification of employee-paid tax and interest under common directions.

3.

Group: Ericsson Communications illustration

Case numbers: Civil Appeal No. 4082 of 2007

Scope: Child-education allowance and territorial/section192 arguments in paragraphs14–15; governed by common directions, without an individual quantum adjudication.

4.

Group: Mitsui & Company penalty appeal

Case numbers: Civil Appeal No. 5152 of 2005

Scope: Counsel identified penalty as the sole issue in this case, paragraphs16–18. Penalty proceedings quashed under paragraph38; no independent factual finding adopts the alleged no-penalty understanding.

5.

Group: Bank of Tokyo-Mitsubishi reasonable-cause illustration

Case numbers: Civil Appeal No. 1778 of 2006

Scope: Paragraph35 cites higher corporate tax of Rs.906.52lacs associated with non-claim of the salary deduction. This is an illustration supporting reasonable cause, not the batch tax demand.

SOURCE & VERIFICATION

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

Identified source rendition: 47 PDF pages; SHA-256

704b0b1fbab3d649967f1bf41fe6d543a2c46d80595e257e4e182d6ffce73e9c. Original bytes preserved.

Judicial paragraphs 1–39 run from the author line on physical page 12 to physical page 47 (SCR 31–66). Physical pages 1–11 and page 12 above the author line contain reporter/headnote, jurisdiction, roster and counsel material. All 47 physical pages were read; no adjacent judgment is included.

Open cited source rendition

No appeal-specific assessment-year roster is supplied. Paragraph 4 expressly gives financial years 1992-93 to 1999-00 for the lead facts, which are not relabelled assessment years. AY 2000-2001 appears in counsel's section 9 Explanation amendment submission in paragraph 17; it is not identified there as an assessment year adjudicated in a particular appeal.

The list above preserves the SCR appeal sequence, with CA 5110-5111/2007 expanded into two numbers. It intentionally retains the twice-printed CA 1346/2007. Paragraphs 35-37 describe 104 cases/appeals; the SCR roster contains 104 expanded occurrences but only 103 distinct identifiers. An actually checked alternate HTML judgment header prints CA 1348/2007 between CA 816/2007 and CA 1357/2007 and also separately prints CA 1346/2007. This variant is disclosed, not silently substituted into the preserved SCR roster. No certified corrected cause list was obtained.

The SCR roster repeats CA 1346/2007 on physical pages 10 and 11. Expanding 5110-5111 produces 104 occurrences but only 103 distinct identifiers, while judicial paragraphs 35-37 state 104 cases/appeals. The alternate HTML header has CA 1348/2007 at the first location. Both are disclosed without silently altering the preserved source.; The lead source gives financial years 1992-93 to 1999-00, not an appeal-specific assessment-year list. AY 2000-2001 occurs in an amendment submission and is not assigned to a party's appeal.; Paragraph 17 records counsel's rest/leave-period submission using "preceded or succeeded"; the statute reproduced on physical page 29 says "preceded and succeeded" and forms part of the employment contract. The submission is not substituted for the quoted statutory text.; Revenue counsel's proposed joint-and-several construction, the deductors' independent-employer arguments, and Mitsui's asserted no-penalty understanding are submissions. The operative findings and directions, not those arguments standing alone, supply the holding.; The higher-corporate-tax illustration of Rs. 906.52 lacs in paragraph 35 is tied to CA 1778/2006, CIT v. The Bank of Tokyo-Mitsubishi Ltd.; it is not the Eli Lilly tax demand or a quantified amount allowed for every respondent.; The historical section 201(1A) quotation is not a present-rate certificate. Paragraph 34 fixes the described period and identifies employee payment as a possible endpoint; the actual rate, amount and prior recoveries require the directed examination.; The report's headnote cites paragraph 38 to SCR 65-A-B, but the actual paragraph is on SCR 66, physical page 47. OCR also confuses the letter B with 8 in section 273B and some forms; visually verified statutory section references and physical-page pinpoints are used.; The official Court News check is a contemporaneous institutional summary. The alternate HTML check is a third-party reproduction confined to the header discrepancy. Neither is comprehensive later judicial treatment or an authenticated corrected cause list.

Lead-case financial years expressly stated: 1992-93 to 1999-00 (paragraph 4).

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, no current-law certification and no Income-tax Act, 2025 mapping. Auxiliary checks concern identity and the same-judgment roster variant, not subsequent judicial treatment.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 47](#)

SHA-256: 704b0b1fbab3d649967f1bf41fe6d543a2c46d80595e257e4e182d6ffce73e9c

[official court news identity corroboration - PDF pages: 22](#)

SHA-256: 8a651aa39aa1570fe0ae743c5c695e39924cfd72d2e476f7fa7e0cb532b16e47

[bounded alternate judgment header 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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