

M/s. Kanchanganga Sea Foods Ltd. v. Commissioner of Income Tax

Civil Appeal No. 3844 of 2003 and connected proceedings (full list below)

[2010] 7 SCR 866 | 2010-07-07

Whether delivery of the agreed fish-catch share in India constituted receipt of taxable charter hire by the non-resident, triggering section 195 despite later foreign sale proceeds.

5(2) | 195 | 201(1) | 201(1A)

Two-judge bench | D.K. Jain, J. | C.K. Prasad, J.

Assessment years: 1991-92, 1992-93, 1993-94, 1994-95

Indian receipt of charter fee in kind; no universal withholding rule

This contractual 85% catch transfer was first received and controlled by the non-resident in India, making the charter payment chargeable and supporting section 195 default. The percentage is not a tax rate. Later overseas sale, treaty questions, wholly non-chargeable payments and current rates require separate analysis; no new demand or compound-interest amount was fixed. Later treatment remains comprehensively unverified.

01 FACTS OF THE CASE

The Indian seafood business hired trawlers from Eastwide Shipping Co. (HK) Ltd. under a March 1990 agreement. The annual all-inclusive charter fee was capped at US\$600,000 per vessel and payable by an 85% catch/sale-earnings arrangement, preserving the specified minimum return to the Indian charterer. Fishing occurred outside territorial waters but within the exclusive economic zone. Voyages began and ended at Chennai, where catches were inspected, valued and cleared before onward export (paragraphs 2–4).

For AYs 1991-92 to 1994-95 the payer neither deducted tax nor produced a tax-clearance certificate. The authorities held it in default; the first appellate order reduced the demand, and the Tribunal and High Court upheld the legal conclusions. Eight appeals covered the reference and writ proceedings arising from those matters (paragraphs 4–10).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court applied section 5(2) through the actual contract and receipt sequence. Until apportionment, the catch belonged to the Indian assessee; the non-resident did not control it. After Indian inspection, valuation and clearance, the non-resident obtained its 85% share as charter hire. That was the first receipt, in India, of money's value. A subsequent sale and realisation abroad did not erase the earlier Indian receipt (paragraphs 13–14).

Toshoku was distinguishable because the mere Indian book entries there did not put the amount at the non-resident's disposal. Ishikawajima's offshore transaction was likewise different from this catch being brought to India and there delivered as charter payment. The Court did not need to treat every operation in the exclusive economic zone as an Indian taxable operation or decide a treaty issue in order to sustain this receipt-based result (paragraphs 15–17).

Since the payment was chargeable and no tax had been deducted, section 195 applied and the payer was correctly held in default under section 201. Payment through an apportioned share in the catch did not remove the withholding obligation (paragraph 18).

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

03 JUDICIAL DECISION

All eight assessee appeals were dismissed without costs. The India-receipt conclusion, section 195 obligation and section 201 default were sustained. The Court did not issue a new quantified demand, fresh rate determination or remand (paragraphs 18–19).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

All eight assessee appeals dismissed; no costs

Final on the receipt-in-India and related withholding/default questions

The recipient gained control of the charter fee in kind in India under these contracts. Not a general rule for every foreign remittance, offshore fishing operation or non-resident charter. No independent treaty, current-rate or interest-on-interest proposition is established.

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

05 AKHB REVIEW POINT

Trace ownership and the moment the recipient first obtains control of the payment, including payment in kind. A later overseas sale is not the first receipt if the charter fee was already transferred in India. Preserve the contract caps and apportionment record; the 85% figure is contractual consideration, not a tax rate or universal attribution percentage.

Keep chargeability separate from collection. In the independently checked GE India paragraphs 8–10, section 195 remains tied to a sum chargeable under the Act, with the composite-payment mechanism separately explained. This is an editorial scope comparison, not a claim that GE expressly overruled or reconsidered Kanchanganga. The present case supplies its own chargeable Indian receipt; it does not justify withholding on wholly non-chargeable payments.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 3844 of 2003 / Civil Appeal No. 3845 of 2003 / Civil Appeal No. 3846 of 2003 / Civil Appeal No. 3847 of 2003 / Civil Appeal No. 3849 of 2003 / Civil Appeal No. 3850 of 2003 / Civil Appeal No. 3851 of 2003 / Civil Appeal No. 3852 of 2003

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity and eight appeals

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4

Paragraphs: Cover; reported list; 1

Source role: reported metadata and judicial text

2.

Topic: Contract and operational chronology

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6; 7

Paragraphs: 2–4

Source role: judicial text

3.

Topic: Lower proceedings and reference questions

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Paragraphs: 5–10

Source role: judicial text

4.

Topic: Receipt, control and statutory charge

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14

Paragraphs: 13–14

Source role: judicial text

5.

Topic: Precedent distinctions and default

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: 15–18

Source role: judicial text

6.

Topic: Disposal

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: 19

Source role: judicial text

7.

Topic: Bounded chargeability comparison

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16; 17

Paragraphs: GE India paragraphs 8–10

Source role: bounded later judicial comparison

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

5(2): First receipt/control of the charter fee in India

195 / 201(1): Chargeable payment in kind, withholding and default

201(1a): Lower-order interest history, without a separately reasoned new rate or compounding rule

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

C.K. Prasad, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 15 PDF pages; SHA-256

350bbdbf0ed262128d30da29225ac3737e4035422b840b722a279fb93c08c27d. Original bytes preserved.

Judicial paragraphs 1–19 on physical pages 4–15 (SCR 869–880). Pages 1–3 and opening of 4 are reporter/editorial material.

No adjacent judgment.

Open cited source rendition

Paragraph 4 identifies AYs 1991-92 through 1994-95, without an individual appeal-to-year mapping.

The appeal list is 3844–3847 and 3849–3852/2003; no missing 3848 proceeding is inferred.; Paragraphs 5 and 7 report materially different lower-authority demand amounts. The Supreme Court gives no fresh computation; the note does not reconstruct a final collection balance.; The lower-order narration of 15% interest and a monthly amount is not a present rate or separately analysed Supreme Court compounding holding.; Physical page 9 prints SCR 674 rather than expected 874; rendition-specific physical pages are used.; Toshoku and Ishikawajima passages are distinguished as quoted in this source. The bounded GE comparison is editorial and does not certify comprehensive later treatment.

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: 15](#)

SHA-256: 350bbdbf0ed262128d30da29225ac3737e4035422b840b722a279fb93c08c27d

[bounded comparison judgment - PDF pages: 18](#)

SHA-256: f1c7a56de9fe19d8cc0bad3b3a30361fa14f60f6aaacdbeafa1871e4dd217b77

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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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