

GVK Inds. Ltd. & Anr. v. The Income Tax Officer & Anr.

Civil Appeal No. 7796 of 1997

[2011] 3 SCR 366 | 2011-03-01

Whether Article 245 permits Parliament to legislate concerning external aspects or causes with no actual or expected connection to India, or to legislate for a foreign territory; and how that differs from valid Indian legislation requiring extra-territorial operation.

9(1)(i) | 9(1)(vii)(b)

Five-judge Constitution Bench | S.H. Kapadia, C.J.I. | B. Sudershan Reddy, J. | K.S. Radhakrishnan, J. | Surinder Singh Nijjar, J. | Swatanter Kumar, J.

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

2011 constitutional reference only; tax appeal left for disposal

This five-judge decision answers Article 245 questions and sends Civil Appeal 7796/1997 to an appropriate bench. GVK withdrew the section 9(1)(vii)(b) constitutional challenge; the Bench did not finally decide FTS, withholding, treaty entitlement or the payment's statutory source nexus. The 2015 tax dismissal is separate. A real or expected real Indian connection remains necessary, and stricter statutory conditions still apply. Reporter defects include Article 262 for the judicial discussion of Article 260, malformed section references and a skipped paragraph number; the bounded 2015 source has a defective NOC sentence from which no post-payment rule is drawn. The preserved mirror is unchanged, but live public access, comprehensive later treatment and current law are unverified; no 2025-Act carryover is certified.

01 FACTS OF THE CASE

The appeal arose from the Andhra Pradesh High Court's 2 May 1997 judgment in Writ Petition No. 6866 of 1995 concerning withholding from a payment to a foreign company. The High Court found section 9(1)(i) inapplicable but sustained section 9(1)(vii)(b) and rejected a challenge to that provision based on legislative competence and Article 14. The present judgment recounts those conclusions; it does not itself determine the payment's tax character (paragraph 7).

The appeal reached a Constitution Bench following orders dated 28 November 2000 and 13 July 2010. Earlier ECIL proceedings had raised Article 245 nexus questions but the ECIL appeals had been withdrawn. Before this Bench, GVK withdrew its challenge to the constitutional validity of section 9(1)(vii)(b) and elected to pursue factual applicability. At the Attorney General's request, the Court nevertheless considered the general constitutional requirement of a relationship or nexus with India (paragraphs 8-9).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court framed two questions. First, is Parliament restricted from legislating about external aspects or causes that have, and are expected to have, no direct or indirect, tangible or intangible impact, effect or consequence for Indian territory or the interests, welfare, wellbeing or security of its inhabitants and Indians? Second, can Parliament legislate for a territory other than India or any part of it? These questions concern legislative competence, not whether this particular foreign-company payment is taxable (paragraphs 4-6).

A rigid reading of ECIL could confine the relevant events or causes themselves to India. The opposite argument would give Parliament unrestricted power over foreign matters, even without Indian connection or benefit. The Court rejected both extremes. The word for in Article 245(1) permits legislation dealing with external events and transactions affecting India, while requiring the exercise of parliamentary power to serve India. It retained ECIL's distinction between making law and operating law, without adopting a requirement that every underlying cause originate inside Indian borders (paragraphs 11-17, 31-49).

Article 245(2) is not an independent grant of limitless legislative power. It protects a law validly made for India against invalidation merely because that law requires extra-territorial operation; it does not remove judicial review of legislative competence or validate laws lacking an Indian connection. The drafting history, the allocation of legislative fields under Articles 246 and 248, and Articles 249, 250 and 253 support that reading. Article 260 concerns governmental functions in a foreign territory by agreement under governing law and does not make Parliament a legislature for that foreign territory. Article 51 and the wider constitutional structure reinforce these limits (paragraphs 50-64).

For external aspects or causes, the constitutional connection must be real or expected to be real, rather than illusory or fanciful. The Court declined a predetermined quantitative threshold of sufficiency or significance. Whether a particular enactment has the necessary real connection is a mixed question of fact and law. If the statute itself requires a stronger relationship, courts must enforce that additional requirement as statutory law (paragraph 76).

The Court expressly excluded the historical development of nexus theory concerning State legislatures from its opinion. It also explained that extra-territorial operation of a law dealing entirely with domestic aspects was not a separate contested issue, and that its discussion of claims to vast State power was not an adjudication of Indian war powers. These qualifications do not supply tax, treaty or general State-legislative holdings (paragraphs 10, 21 and 75).

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

03 JUDICIAL DECISION

The first question was answered yes: Parliament is constitutionally restricted from legislating about extra-territorial aspects or causes lacking any actual or expected Indian connection. It may legislate about such external matters when the required real or expected real connection exists, subject to the Constitution and the stated statutory-relationship qualification. The second question was answered no: Parliament cannot legislate for a foreign territory in the sense of making laws about matters with no Indian impact or nexus. Valid laws for India are not invalid merely because they require extra-territorial operation (paragraph 76).

The reference was answered and Civil Appeal No. 7796 of 1997 was directed to be listed before an appropriate bench for disposal (paragraph 77). The appeal was neither allowed nor dismissed here, and no final tax liability, withholding amount, FTS classification, treaty relief or section 9 source-rule application was decided. The constitutional-validity challenge to section 9(1)(vii)(b) had been withdrawn, rather than adjudicated or left pending for a constitutional ruling.

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Constitutional reference answered; no final assessee-versus-Revenue tax winner at this stage

Two Article 245 questions answered; Civil Appeal No. 7796 of 1997 directed to be listed before an appropriate bench for disposal; no costs direction stated

Concluded on the referred constitutional questions; individual tax appeal not finally disposed of in this judgment

A real or expected real Indian connection is required, without a predetermined constitutional sufficiency threshold. Statutory nexus conditions remain independently enforceable. Section 9(1)(vii)(b) validity was not adjudicated after withdrawal; the payment's tax character, withholding consequences and any treaty entitlement were not decided at this reference stage. The later 2015 dismissal is a distinct decision.

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

05 AKHB REVIEW POINT

Keep three inquiries separate: Parliament's constitutional competence, the actual reach and conditions of the charging provision, and the tax result on the particular facts. An external transaction can fall within legislative competence without that constitutional conclusion itself imposing a tax. Conversely, the absence of a fixed constitutional sufficiency threshold does not dispense with a stronger nexus condition written into the statute. Evidence of the real or expected Indian effect remains material.

The bounded original-source comparison confirms why the two GVK decisions must not be merged. The 18 February 2015 two-judge judgment recounts the withdrawal and referral history in paragraphs 14-19, identifies the uninvoked India-Switzerland treaty in the opening discussion of paragraph 20, and separately reaches the consultancy/withholding result and dismisses this appeal without costs in paragraphs 37-38. That is the later tax disposition, not a holding delivered by this Constitution Bench. No comprehensive later-treatment review, current-law opinion or 2025-Act correspondence is asserted.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, source headnote discrepancy and author

Source url: [Open cited source](#)

Pdf pages: 1; 2; 23

Paragraphs: Cover; jurisdiction and author line; 1

Source role: reported metadata and judicial text

2.

Topic: Questions and defined constitutional nexus

Source url: [Open cited source](#)

Pdf pages: 25; 26; 27

Paragraphs: 4-6

Source role: judicial text

3.

Topic: Originating tax appeal, withdrawal and reference limits

Source url: [Open cited source](#)

Pdf pages: 27; 28; 29

Paragraphs: 7-10

Source role: judicial text

4.

Topic: ECIL distinction and risk of rigid territorial reading

Source url: [Open cited source](#)

Pdf pages: 29; 30; 31; 32; 33

Paragraphs: 11-17

Source role: judicial text

5.

Topic: Attorney General propositions; State-legislature issue excluded; skipped paragraph number

Source url: [Open cited source](#)

Pdf pages: 33; 34; 35

Paragraphs: 19, 21-22

Source role: judicial text

6.

Topic: Indian benefit and external aspects with a real connection

Source url: [Open cited source](#)

Pdf pages: 43; 44; 45; 46; 47; 48; 49; 50; 51; 52

Paragraphs: 33-49

Source role: judicial text

7.

Topic: Article 245(2), judicial review and drafting history

Source url: [Open cited source](#)

Pdf pages: 52; 53; 54; 55; 56

Paragraphs: 50-55

Source role: judicial text

8.

Topic: Other legislative provisions and Article 260

Source url: [Open cited source](#)

Pdf pages: 56; 57; 58; 59; 60; 61

Paragraphs: 56-64

Source role: judicial text

9.

Topic: Authorities distinguished and constitutional safeguards

Source url: [Open cited source](#)

Pdf pages: 61; 62; 63; 64; 65; 66; 67; 68; 69; 70

Paragraphs: 65-75

Source role: judicial text

10.

Topic: Both answers and real rather than fanciful connection

Source url: [Open cited source](#)

Pdf pages: 70; 71

Paragraphs: 76

Source role: judicial text

11.

Topic: Appeal left for an appropriate bench

Source url: [Open cited source](#)

Pdf pages: 71

Paragraphs: 77

Source role: judicial text

12.

Topic: Bounded later confirmation of distinct reference and tax stages

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16; 17; 18; 19

Paragraphs: 2015 paragraphs 14-19; opening discussion of paragraph 20 before reproduced statutory text

Source role: bounded later judicial comparison

13.

Topic: Bounded later consultancy conclusion and final dismissal

Source url: [Open cited source](#)

Pdf pages: 29; 30

Paragraphs: 2015 paragraphs 37-38

Source role: bounded later judicial comparison

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

9(1)(i): Reported High Court rejection of this taxing route; not freshly decided by the Constitution Bench

9(1)(vii)(b): Originating withholding dispute and withdrawn constitutional-validity challenge; factual tax applicability left for the appropriate bench

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B. Sudershan Reddy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

CONSTITUTIONAL PROVISIONS CONSIDERED

245(1); 245(2); 1; 2; 14 (withdrawn challenge background); 51; 246; 248; 249; 250; 253; 260; 368 (interpretative context)

SCOPE AND LIMITS OF THE RECORDED TREATMENT CHECKS

1.

Comparison case: GVK Industries Ltd. & Anr. v. The Income Tax Officer & Anr., 18 February 2015, [2015] 3 SCR 321

Source url: [Open cited source](#)

Source asset id: 2015_3_321_350

Pages actually read: 1; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 27; 28; 29; 30

Passages relied on: Paragraphs 14-19; opening discussion of paragraph 20 on physical page 19 before the reproduced statute; complete paragraphs 37-38

Original rendition independently read: True

Full comparison judgment read in this review: False

Result: Same appeal returned after the 2011 reference; constitutional validity remained unadjudicated following withdrawal. The 2015 Bench separately decided the tax-merits dispute and dismissed the appeal without costs. The treaty was not invoked. No transfer of the 2015 tax holding to the 2011 decision.

Later treatment status: not verified

Scope limit: One bounded same-litigation comparison only; no complete subsequent-treatment or statute audit.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 71 PDF pages; SHA-256

35fade31732a5c136d6adb220ee833a46699b1c0b143bd39a12b6848c550ff52. Original bytes preserved.

Judicial text from the author line and paragraph 1 on physical page 23 (SCR 388) through paragraph 77 on physical page 71 (SCR 436), fully read. Pages 1-22 and the opening part of page 23 are reporter metadata, headnote, cited-case list, jurisdiction and appearances. The source numbering runs 1-19, then 21-77; no paragraph 20 is printed after the eight propositions within paragraph 19. One judgment; no adjacent judgment or separate opinion.

Open cited source rendition

No assessment year is identified in this constitutional-reference judgment. No year is inferred from the High Court writ number, remittance dispute or reference chronology.

The cover identifies a five-judge Constitution Bench and 1 March 2011. The same Civil Appeal 7796/1997 reappears in the separate 18 February 2015 two-judge tax judgment; common docket identity does not make them duplicate renditions of one decision.; The cover headnote lists Article 262, whereas the judicial analysis and quotation at paragraphs 61-63 concern Article 260. The headnote also prints malformed section references 9(1)(1) and 9(1)(vii)(4); paragraph 7 correctly identifies 9(1)(i) and 9(1)(vii)(b). Judicial text governs the note; these reporter errors are not silently treated as additional holdings.; The source jumps from numbered paragraph 19, containing eight propositions of the Attorney General, to paragraph 21. No paragraph 20 is invented or used as a pinpoint. The Attorney General's absolute-power propositions and quoted earlier decisions are not substituted for this Court's conclusions.; Paragraphs 7-9 recite High Court and ECIL history. This is not an independent rereading or certification of those earlier judgments; GVK's withdrawn constitutional challenge was not decided by the present Bench.; The 2015 comparison is bounded and secondary. Its paragraph 37 has a visibly defective final NOC sentence, also reflected inconsistently in the headnote; this note relies only on the clear consultancy/withholding conclusion and paragraph 38 dismissal, without deriving a post-payment prohibition on an NOC.; The reviewed source is the unchanged reported public-mirror PDF. A fresh web-open failed; no signed-original retrieval, live-link availability, comprehensive subsequent treatment, current-law or statutory crosswalk verification is claimed.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. The Income-tax Act provisions are procedural background to this constitutional reference, not finally applied to the tax facts here.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent judicial or statutory audit. A separately identified bounded reading of the actual 18 February 2015 judgment confirms the later stage of this same appeal; it does not certify all later treatment or present law.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 71](#)

SHA-256: 35fade31732a5c136d6adb220ee833a46699b1c0b143bd39a12b6848c550ff52

[bounded comparison judgment - PDF pages: 30](#)

SHA-256: 06ab48ec25b9af4381fd886d4d9310f74bda1ce88597a9b9306e5a0d9fe6ea6e

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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