

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

Civil Appeal No. 7796 of 1997

[2015] 3 SCR 321 | 2015-02-18

Whether the success fee for a Swiss company's financial advisory services for an Indian power project was deemed to accrue in India as fees for technical services under section 9(1)(vii)(b), requiring deduction of tax before the sought remittance clearance despite absence of a section 9(1)(i) business connection.

9(1)(vii)(b) | 9(1)(vii) Explanation 2 | 9(2) Explanation | 9(1)(i)

Two-judge bench | Sudhansu Jyoti Mukhopadhyaya, J. | Dipak Misra, J.

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

2015 tax merits only; treaty and source-text limits

This is the 18 February 2015 two-judge tax-merits judgment, not the 2011 Constitution Bench decision. The constitutional challenge had been withdrawn and the India–Switzerland treaty was not invoked. No assessment year or withholding rate is stated. Paragraph 37's final NOC sentence is visibly defective, and the headnote has an inconsistent formulation: rely on the clear tax-deduction holding and dismissal, not an inferred prohibition on clearance after tax payment. The unchanged reported-mirror PDF is the reviewed rendition; its public URL could not be revalidated here. Later treatment and current statutory position remain unverified, with no 2025-Act carryover certification.

01 FACTS OF THE CASE

GVK was developing a 235 MW gas-based power project at Jegurupadu, Andhra Pradesh, with an estimated cost of Rs. 839 crore. It engaged ABB Projects & Trade Finance International Ltd., Zurich, to advise on the financing structure, lending alternatives, financial modelling, credit agencies, lender documentation and financial closing. The agreed success fee was 0.75% of total debt financing, payable at closing. Services were provided from Zurich by correspondence; GVK obtained rupee financing through IDBI and foreign-currency financing from IFC, Washington. The invoice was US\$ 1,715,476.16, stated as Rs. 5.4 crore (paragraphs 1-2, 29-32).

GVK sought an NOC to remit without tax deduction, contending that the Swiss adviser had no Indian establishment or business connection and rendered no taxable technical services. The income-tax officer refused; the Commissioner initially allowed remittance against a bank guarantee but later required tax deduction and payment as a condition of the NOC, dismissing the revision. The Andhra Pradesh High Court rejected the writ challenge. After the constitutional-reference stages, the appeal returned for tax-merits determination (paragraphs 3-19).

Source: [reported judgment / paragraphs 1-19 / PDF pages 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 / judicial text: reported judgment / paragraphs 29-32 / PDF pages 26, 27, 28 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court first separated the possible charging routes. It accepted the High Court's conclusion that the adviser lacked the business connection required for section 9(1)(i); Revenue did not contend that income had actually arisen or been received in India. The remaining question was the independent deeming rule in section 9(1)(vii). GVK had not invoked the India–Switzerland Double Taxation Avoidance Agreement, so no treaty entitlement was adjudicated (paragraphs 19-20).

The Court set out section 9(1)(vii), including Explanation 2, and the 2007 and 2010 retrospective Explanations to section 9(2). For a resident payer, clause (b) excepts services used in an overseas business or profession or for earning income from an overseas source. Its source-rule discussion located the relevant nexus in the payment and the Indian commercial use of consultancy; rendering the advice abroad did not itself resolve taxability (paragraphs 20-27).

The agreement and board resolution showed substantive expert advice: constructing the financial model, arranging the rupee/foreign-currency funding strategy and helping with loan negotiations and documentation. Consultancy in ordinary usage includes specialised advisory services and need not be confined to technological expertise. The construction, assembly, mining and salary exclusions in Explanation 2 did not apply. The adviser's specialist contribution to this Indian project therefore fell within consultancy services and the statutory fees-for-technical-services category, regardless of its success-fee label (paragraphs 28-37).

Source: [reported judgment / paragraphs 19-37 / PDF pages 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 / judicial text](#)

03 JUDICIAL DECISION

The success fee was taxable as fees for technical services under section 9(1)(vii)(b), and tax should have been deducted at source. The High Court's refusal of the requested NOC relief was sustained. Civil Appeal No. 7796 of 1997 was dismissed with no order as to costs; there was no remand (paragraphs 37-38).

Source: [reported judgment / paragraphs 37-38 / PDF pages 29, 30 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue overall; assessee's no-business-connection position separately accepted

Civil Appeal No. 7796 of 1997 dismissed; no order as to costs

Final tax-merits determination of this success-fee/NOC dispute

The result is under the domestic Act for the documented consultancy and Indian project. It does not decide treaty relief or the withdrawn constitutional-validity challenge; absence of business connection did not defeat the independent section 9(1)(vii) charge. The garbled last NOC sentence is not converted into a rule against issuing an NOC after payment of tax.

Source: [reported judgment / paragraphs 20, 37-38 / PDF pages 19, 30 / judicial text](#)

05 AKHB REVIEW POINT

Identify what the adviser actually promised and delivered, where the resident payer used the advice, and whether the statutory overseas-business/source exception applies. A contingent fee and foreign place of performance do not by themselves remove financial consultancy from the domestic fees-for-technical-services definition. Conversely, this judgment cannot replace a separate treaty analysis: no DTAA claim was advanced. Keep the 2015 tax-merits result distinct from the 2011 constitutional-reference answers. The retrospective section 9(2) explanations are reproduced in this historical judgment; their mention is not a comprehensive statutory or later-treatment audit.

Source: [reported judgment / paragraphs 15, 19-22, 28-38 / PDF pages 15, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30 / judicial text](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Appeal groups

1.

Case numbers: Civil Appeal No. 7796 of 1997

Disposition: Dismissed on tax merits

Remand: False

Pinpoints

1.

Source url: [Open cited source](#)

PDF pages: 30

Paragraphs: 37-38

Source role: judicial text

Issue results

1.

Issue: Section 9(1)(i) business connection

Result: High Court's finding of no business connection accepted

In whose favour: Assessee on this route only

Pinpoints

1.

Source url: [Open cited source](#)

PDF pages: 19

Paragraphs: 20

Source role: judicial text

2.

Issue: Consultancy success fee under section 9(1)(vii)(b)

Result: Taxable fees for technical services; tax deduction obligation and denial of requested NOC relief sustained

In whose favour: Revenue

Pinpoints

1.
Source url: [Open cited source](#)
Pdf pages: 25; 26; 27; 28; 29; 30
Paragraphs: 28-38
Source role: judicial text
3.
Issue: Constitutional validity and India–Switzerland treaty
Result: Constitutional challenge withdrawn; treaty not invoked; neither merits question adjudicated in this judgment
In whose favour: Not decided

Pinpoints

1.
Source url: [Open cited source](#)
Pdf pages: 15; 19
Paragraphs: 15, 19-20
Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

5(2); 163(1)(b); 264

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Dipak Misra, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SCOPE AND LIMITS OF THE RECORDED TREATMENT CHECKS

1.
Scope: Paragraphs 13-19 recount the constitutional-reference stages; paragraph 20 states no DTAA was invoked; paragraphs 34-36 discuss advisory/consultancy authorities.
Pages actually read: 14; 15; 16; 17; 18; 19; 28; 29
External originals checked: False
Later treatment checked: False
Result: 2015 tax merits distinguished from earlier constitutional stage; no independent treatment certification.

SOURCE & VERIFICATION

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

Identified source rendition: 30 PDF pages; SHA-256

06ab48ec25b9af4381fd886d4d9310f74bda1ce88597a9b9306e5a0d9fe6ea6e. Original bytes preserved.

Judgment paragraphs 1-38 on physical pages 6-30 (SCR 326-350), fully read, including the account and quotations of the earlier constitutional-reference stage. Pages 1-5 and opening appearances on page 6 are reported metadata, editorial headnote and references. This is the 18 February 2015 two-judge tax-merits judgment, not the 1 March 2011 Constitution Bench decision. No neighbouring judgment or separate opinion.

Open cited source rendition

No assessment year is identified in this NOC/withholding writ appeal. The transaction history includes the July 1993 proposal, August 1993 board approval, September 1994 refusal and 1995 revision orders; no assessment year is inferred from them.

Section 9(1)(vii)(b), Explanation 2 and the quoted 2007/2010 versions of the Explanation to section 9(2) supply the tax-merits analysis. Section 9(1)(i) is separately rejected on the business-connection facts. Sections 5(2), 163(1)(b) and 264 are background or procedural provisions. The judgment requires withholding but does not expressly identify section 195; it is not added as a separately adjudicated provision. Articles 14, 245 and 260 concern the recounted constitutional history.

This is a preserved reported eSCR mirror, not a separately retrieved signed original; current network availability of the acquisition URL was not established by the unsuccessful web-open attempt; The printed final NOC sentence at paragraph 37, page 30, is grammatically defective; the headnote also contains an inconsistent post-tax-payment formulation. The note relies on paragraphs 3, 19, 37 and 38 together for the withholding requirement and dismissal, and does not silently repair or apply that isolated sentence.; No assessment year or applicable withholding rate is supplied. The earlier constitutional judgment and uninvoked treaty are outside the merits adjudication.

One tax-merits civil appeal. The report recounts the 2000 and 2010 references and the Constitution Bench decision of 1 March 2011, reported at (2011) 4 SCC 36. Those are earlier stages, not additional decisions delivered in this source. The constitutional challenge to section 9(1)(vii)(b) had been withdrawn; paragraphs 15 and 19 expressly preserve that limit.

STATUTORY SCOPE

Historical Income-tax Act, 1961 provisions only. No current-law certification or automatic mapping to the Income-tax Act, 2025.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment or present-law audit has been performed. Only the three assigned reported judgments were reviewed; earlier authorities discussed or quoted within them were not independently reread.

IDENTIFIED SOURCE LINKS

[reported 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.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.