

Oil & Natural Gas Corporation Limited v. Commissioner of Income Tax & Anr.

Civil Appeal No. 731 of 2007 and connected proceedings (full list below)

No separate citation stated in the source | 2015-07-01

Whether payments under the identified non-resident mineral-oil service contracts were assessable under section 44BB or as FTS under section 44D read with Explanation 2 to section 9(1)(vii).

44BB | 44D | 9(1)(vii), Explanation 2

Two-judge bench | Ranjan Gogoi, J. | Pinaki Chandra Ghose, J.

Assessment years: 1985-86, 1986-87

Historical section 44BB/44D contract ruling

This is the non-reportable CA731/2007 judgment, distinct from the same-title/date CA730/2007 Surtax decision. It classifies the 44 examined contracts under section 44BB rather than section 44D. The 10% figure is deemed profit, not a tax rate. Application of later statutory regimes and comprehensive subsequent treatment remains unverified.

01 FACTS OF THE CASE

ONGC was assessed as representative of foreign companies engaged under separate agreements connected with its mineral-oil operations. In the lead Foramer case, experienced personnel were supplied for operation and management of drilling rigs, including drilling functions, for assessment years 1985-86 and 1986-87. The Assessing Officer applied section 44D; the Commissioner (Appeals) and Tribunal applied section 44BB. The High Court reversed, emphasizing the technical personnel and daily fee, and applied its lead ruling to the other appeals (paragraphs 2-6).

The Supreme Court considered 44 contracts. Their work covered drilling, seismic and reservoir analysis, rig and equipment services, related training and consultancy, and specific exploration software. The Court checked the contracts and accepted the work descriptions in its detailed table; these were not merely a generalized account of the oil industry (paragraph 13, pages 19-22).

Source: [official signed judgment / paragraphs 2-6 and contract table in paragraph 13 / PDF pages 2, 3, 4, 5, 19, 20, 21, 22 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court read the computation provisions with the FTS definition. Explanation 2 to section 9(1)(vii), incorporated for section 44D, excludes consideration for a mining or like project undertaken by the recipient. The mining legislation and constitutional distribution of subjects showed that petroleum drilling is mining activity; mineral oil's separate treatment in the 1957 legislation did not mean it was outside that concept (paragraphs 7-8 and 13).

The governing inquiry was the agreement's real and dominant purpose and the proximity of its work to prospecting, extraction or production. The Court accepted the substance-of-the-agreement test where services were directly associated or inextricably connected with those operations. It also relied on CBDT Instruction No. 1862 dated 22 October 1990, reproduced in the judgment, which adopted the Attorney General's view concerning mineral-oil mining projects, including the described training and drilling work (paragraphs 9 and 13).

Revenue submitted that the services were ancillary and offered a remand for contract-by-contract examination. The Court instead conducted that examination itself. It found the dominant purpose of each listed agreement inextricably connected with mineral-oil prospecting, extraction or production, despite ancillary work. The payments were therefore appropriately assessed under section 44BB rather than section 44D (paragraphs 12-13).

Source: [official signed judgment / paragraphs 7-9 and 13; distinguish quoted provisions/instruction from reasons / PDF pages 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23 / judicial text](#)

03 JUDICIAL DECISION

All 44 appeals were allowed. The High Court orders were set aside and the Commissioner (Appeals)' view, as affirmed by the Tribunal, was restored. The Court applied section 44BB to the identified contracts; it did not order a fresh merits remand. There was no order as to costs (paragraphs 13-14).

Source: [official signed judgment / paragraphs 13-14 / PDF pages 22, 23 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: ONGC as representative assessee and the non-resident contractors on the section 44BB/44D issue

All appeals allowed; High Court reversed; favourable Commissioner (Appeals)/Tribunal view restored; no costs

Final statutory classification of the 44 contracts actually examined

Not a universal section 44BB entitlement for every supplier connected with the oil industry, or a ruling on every later section 44DA configuration. Section 44BB's stated 10% is a deemed-profit computation, not a 10% tax-rate ruling. No individual refund or contract-wise final tax amount is quantified.

Source: [official signed judgment / paragraphs 13-14 / PDF pages 23 / judicial text](#)

05 AKHB REVIEW POINT

Match the contract's dominant work to the mining operation and retain the agreement, actual deliverables and operating nexus. A description such as technical consultancy, training or software is not alone conclusive in either direction. This result rested on the Court's own review of every contract in the table, not simply the identity of ONGC as customer.

Keep the computation regime and statutory year visible. The dispute was section 44BB versus section 44D under the historical setting; the quotation's references to other provisions do not amount to decisions on all later amendments. Also identify this judgment by CA731/2007: the same parties obtained a separate decision in CA730/2007 on the same date under the Surtax Act.

Source: [official signed judgment / paragraphs 13-14; editorial application / PDF pages 17, 18, 19, 20, 21, 22, 23 / judicial text](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 731 of 2007 / Civil Appeal No. 729 of 2007 / Civil Appeal No. 733 of 2007 / Civil Appeal No. 736 of 2007 / Civil Appeal No. 737 of 2007 / Civil Appeal No. 738 of 2007 / Civil Appeal No. 740 of 2007 / Civil Appeal No. 741 of 2007 / Civil Appeal No. 6008 of 2007 / Civil Appeal No. 6016 of 2007 / Civil Appeal No. 6023 of 2007 / Civil Appeal No. 925 of 2008 / Civil Appeal No. 1239 of 2008 / Civil Appeal No. 1240 of 2008 / Civil Appeal No. 1514 of 2008 / Civil Appeal No. 1515 of 2008 / Civil Appeal No. 1516 of 2008 / Civil Appeal No. 1517 of 2008 / Civil Appeal No. 1518 of 2008 / Civil Appeal No. 1519 of 2008 / Civil Appeal No. 1520 of 2008 / Civil Appeal No. 1521 of 2008 / Civil Appeal No. 1522 of 2008 / Civil Appeal No. 1523 of 2008 / Civil Appeal No. 1524 of 2008 / Civil Appeal No. 1527 of 2008 / Civil Appeal No. 1528 of 2008 / Civil Appeal No. 1529 of 2008 / Civil Appeal No. 1531 of 2008 / Civil Appeal No. 1532 of 2008 / Civil Appeal No. 1533 of 2008 / Civil Appeal No. 1535 of 2008 / Civil Appeal No. 2008 of 2008 / Civil Appeal No. 2012 of 2008 / Civil Appeal No. 4321 of 2008 / Civil Appeal No. 7226 of 2008 / Civil Appeal No. 7227 of 2008 / Civil Appeal No. 7230 of 2008 / Civil Appeal No. 2794 of 2009 / Civil Appeal No. 2795 of 2009 / Civil Appeal No. 2796 of 2009 / Civil Appeal No. 2797 of 2009 / Civil Appeal No. 1722 of 2010 / Civil Appeal No. 6174 of 2010

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

115A: comparison in the quoted CBDT instruction; 44DA: appears in the quoted statutory proviso; its separate later-regime application is not decided

OTHER GOVERNING STATUTES

Mines Act, 1952, sections 2(j) and 2(jj); Oil Fields (Regulation and Development) Act, 1948; Mines and Minerals (Development and Regulation) Act, 1957, sections 3(a) and 3(b); Petroleum and Natural Gas Rules, 1959: mining context discussed

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Ranjan Gogoi, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 23 PDF pages; SHA-256

05b6e122baf34d95cd2126077d9fcc898ca41afa82de5ec8dec1596bb3189b5e. Original bytes preserved.

One common judgment, paragraphs 1-14 on physical pages 1-23; statutory and CBDT-instruction quotations at pages 5-13; counsel submissions distinguished at pages 13-17; Court reasoning and complete 44-contract table at pages 17-23; signed date on page 23.

Open cited source rendition

No neutral or reporter citation is printed in this official original; identified by lead appeal and date.

These are the lead Foramer facts in paragraph 6; not imputed to each of the other 43 appeals.

All 44 appeals are individually preserved from the original cover. This is lead CA731/2007; the separate same-title/date CA730/2007 Surtax Act decision must not be merged into this record.

The same-title/date reported CA730/2007 concerns the Companies (Profits) Surtax Act; its cover was checked only for identity separation. Its reasoning and outcome are not incorporated here.; The statutory block includes bracketed provisions of different legislative dates. It is reproduced by the Court, not certified here as the exact consolidated text for every historical assessment year.; The quoted instruction on page 12 contains a section 9(1)(ii) reference within text otherwise expressly about section 9(1)(vii), Explanation 2. The note retains the consistently identified FTS provision and discloses the printed slip.; The 44 contract descriptions were accepted by the Court at paragraph 13. The preceding eight categories at paragraph 10 are counsel's grouping; these are not confused with 44 independently proved universal categories.

STATUTORY SCOPE

Historical contract and computation dispute only. Later section 44DA/44BB amendments, treaty interaction and Income-tax Act, 2025 mapping are not certified.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment or current-law audit. The CBDT instruction and Attorney General's view are reviewed as reproduced and considered in this judgment; separate complete originals have not been obtained.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 23](#)

SHA-256: 05b6e122baf34d95cd2126077d9fcc898ca41afa82de5ec8dec1596bb3189b5e

[reported judgment identity comparison only - PDF pages: 15](#)

SHA-256: f438ee90541a371c3000c2dc4a907f5e8c4927c0cf65abada149d68dc599b776

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