

ITC Limited Gurgaon v. Commissioner of I.T. (TDS) Delhi

Civil Appeal No. 4435 of 2016 and connected proceedings (full list below)

[2016] 3 SCR 23 | 2016-04-26

Whether voluntary customer tips collected by hotel employers, including through credit cards, and passed to employees require salary withholding under section 192 and consequential section 201 liability.

15 | 17(1)(iv) | 17(3)(ii) | 17(3)(iii) | 56(1) | 192 | 201(1) | 201(1A) | 271C

Two-judge bench | Kurian Joseph, J. | R.F. Nariman, J.

Assessment years: 2003-04, 2004-05, 2005-06

Voluntary tips are not tax-free; penalty is separate

The hotels had no section 192 duty for these voluntary customer tips held and distributed as a fiduciary conduit. The Court treated the receipts as taxable other-source income of employees. The result does not decide compulsory service charges or contractual pay; independent section 271C proceedings remained outside these appeals, and a general bona-fide-belief defence to interest was not decided. Later treatment and current law are unverified.

01 FACTS OF THE CASE

Hotel operators collected customer tips and distributed them to employees without salary-tax deduction. The Assessing Officers treated the tips as salary and raised section 201(1) default and section 201(1A) interest demands for AYs 2003-04 to 2005-06. The Commissioner (Appeals) and Tribunal rejected that treatment. The Delhi High Court reversed, distinguishing cash tips received directly from tips paid through credit cards and subsequently distributed from the employer's account (paragraphs 3–8).

The employers maintained that the tips were voluntary customer payments, unrelated to remuneration promised by their employment contracts, and that they merely held and passed on the money for staff. Revenue relied on the breadth of salary and profits-in-lieu provisions and the fact that the employer made the final payment. A Revenue cross-appeal also challenged the High Court's penalty observations (paragraphs 9–10 and 36).

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

02 DISCUSSION BY THE HON'BLE COURT

Section 192 applies to income chargeable under salaries. The source of these tips was the customer, and the hotel was a fiduciary intermediary rather than the person paying salary on its own or another employer's behalf. Following the income-head distinction in *Emil Webber*, the Court placed these tips in income from other sources in the employees' hands. Absence of salary withholding did not make the receipts tax-free (paragraphs 12–13 and 30).

The Court analysed the accrued, paid/allowed and arrears branches of section 15 and the employment nexus in section 17. Staff had no vested claim against the employer for these purely voluntary tips. Passing customer money through the employer's account did not supply the missing connection with the employment bargain. The Court accepted the fiduciary character of collected tips and rejected the suggestion that any payment routed from employer to employee automatically becomes salary (paragraphs 14–18 and 21–26).

The cited foreign decisions had to be read against their different statutory language. The relevant proximity inquiry reinforced the conclusion that the contract of employment was not the proximate cause of the receipts here. The Court did not adopt every foreign employment-income test as an Indian rule (paragraphs 27–35).

With no section 192 duty on these facts, the hotels were not assesseees in default on that basis and the related interest demand could not survive. The Court therefore did not decide the competing general arguments about whether a bona fide belief excuses mandatory interest. The separately initiated section 271C penalty proceedings were outside the appeals; setting aside the High Court judgment meant that its penalty observations bound neither party (paragraphs 36–38).

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

03 JUDICIAL DECISION

The assessee appeals were allowed, Revenue's appeals arising from SLP(C) Nos. 9587–9589/2012 were dismissed, and the High Court judgment was set aside without costs. These voluntary customer tips were outside salary withholding under section 192, so the associated default and interest conclusions failed. No separate penalty order was adjudicated (paragraphs 36–38).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee hotel operators on withholding, default and consequential interest

Assessee appeals allowed; Revenue SLP-derived appeal group dismissed; High Court judgment set aside; no costs

Final determination of the section 192 and related section 201 issues on the stated tips arrangement

Tips remain taxable in employees' hands as other-source income on the Court's analysis. Compulsory service charges, contractual remuneration and different arrangements are not independently decided. Penalty proceedings were outside these appeals; the nature of interest and a general bona-fide-belief defence were unnecessary to decide.

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

05 AKHB REVIEW POINT

Keep the customer's voluntary payment, the hotel's custody and distribution arrangements, and the staff employment terms distinct. The decision turns on the hotel acting as a conduit for tips unrelated to its remuneration obligation; payment through a card or pooled account alone does not change that character. Do not use it as a blanket exemption for mandatory service charges or employer-funded incentives.

Separate receipt taxability from the payer's withholding duty. Section 192 relief here coexists with the employees' other-source taxability. Likewise, the interest result follows from the absence of default; it does not decide a general excuse for late withholding, and the independent penalty record must be considered in its own proceedings. Current provisions and subsequent treatment are unverified.

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

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 4435 of 2016 / Civil Appeal No. 4436 of 2016 / Civil Appeal No. 4437 of 2016 / Civil Appeal No. 4438 of 2016 / Civil Appeal No. 4439 of 2016 / Civil Appeal No. 4440 of 2016 / Civil Appeal No. 4441 of 2016 / Civil Appeal No. 4442 of 2016 / Civil Appeal No. 4443 of 2016 / Civil Appeal No. 4444 of 2016

DETAILED DISPOSITION AND CONNECTED GROUPS

Appeal groups

1.

Appeals: Assessee civil appeals in the listed batch

Disposition: Allowed

2.

Appeals: Revenue civil appeals arising from SLP(C) Nos. 9587-9589/2012

Disposition: Dismissed

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, all listed appeals and author

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: Cover and reported appeal list; 1–4

Source role: reported metadata and judicial text

2.

Topic: Assessment years and lower-court course

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: 3–8

Source role: judicial text

3.

Topic: Parties' positions

Source url: [Open cited source](#)

Pdf pages: 6; 7; 8

Paragraphs: 9–10

Source role: judicial text

4.

Topic: Income head and section 192

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: 12–13

Source role: judicial text

5.

Topic: Employment nexus and fiduciary custody

Source url: [Open cited source](#)

Pdf pages: 12; 13; 14; 15; 16; 17; 18

Paragraphs: 14–23

Source role: judicial text

6.

Topic: Karamchari distinction

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21

Paragraphs: 24–26

Source role: judicial text

7.

Topic: Foreign-law limits and proximity

Source url: [Open cited source](#)

Pdf pages: 21; 22; 23; 24

Paragraphs: 27–35

Source role: judicial text

8.

Topic: Penalty, interest and operative groups

Source url: [Open cited source](#)

Pdf pages: 24; 25

Paragraphs: 36–38

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

15 / 17 / 56(1): Character of voluntary tips and the employee's income head

192 / 201: Employer withholding and consequential default/interest

271c: Separately initiated penalty outside the appeals; no fresh penalty merits ruling

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 25 PDF pages; SHA-256

745d09590646187df8161bf69c32873f77bd5276a2bc907cdc47359d1d341c9d. Original bytes preserved.

Judicial paragraphs 1–38 occupy physical PDF pages 4–25 (SCR 26–47); pages 1–3 and the opening of page 4 are editorial identity, headnotes, references and appearances. No adjacent judgment.

[Open cited source rendition](#)

Paragraph 4 identifies these three years for the group. The earlier Tribunal decision concerning AY 1986-87 is procedural background, not an additional year adjudicated here.

The reported page 4 lists ten civil appeals, 4435–4444/2016. Paragraph 38 identifies Revenue's dismissed group by SLP(C) Nos. 9587–9589/2012; this rendition does not pair those originating SLPs with particular converted civil-appeal numbers, so no such allocation is invented.

The reported source lists the civil-appeal range but identifies Revenue's group by originating SLP numbers in the disposition. No unverified conversion pairing is supplied.; Statutory extracts in paragraph 11 contain provisions and rates not independently reconciled to each historical payment year; they are not a current or historical calculation table.; The penultimate page reports a separate 19 June 2013 penalty order. It is not automatically vacated or upheld by this note, because paragraph 36 expressly excludes the penalty proceedings from these appeals.; Quoted foreign authorities and Karamchari Union have their own internal paragraph numbers. Pins refer to the Supreme Court's outer numbering. Foreign-court labels in the source are not independently certified.

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 treatment search is claimed. Authorities described in the discussion are those considered in this judgment unless expressly stated otherwise.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 25](#)

SHA-256: 745d09590646187df8161bf69c32873f77bd5276a2bc907cdc47359d1d341c9d

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.