

Sedco Forex International Inc. Through It's Constituted Attorney Mr. Navin Sarda v. Commissioner of Income Tax, Meerut & Anr.

Civil Appeal No. 4906 of 2010 and connected proceedings (full list below)

[2017] 11 S.C.R. 399 | 2017-10-30

Whether fixed mobilisation fees for moving drilling rigs from abroad to Indian oilfield locations enter the section 44BB(2) receipts base when paid abroad and described as reimbursement; and, separately, whether compensation for tools lost in the hole falls within that base.

44BB | 4 | 5(2) | 9(1)(i) | Explanation 1(a) to 9(1)(i)

Two-judge bench | A. K. Sikri, J. | Ashok Bhushan, J.

Assessment years: 1986-87, 1987-88, 2000-01

Receipt-specific holding; distinguish deemed profit from tax rate

This judgment concerns fixed mobilisation fees under indivisible Indian oilfield contracts and separately excludes compensation for lost tools. It does not tax all foreign receipts or every reimbursement. The reproduced section 44BB(1) deems 10% of the specified aggregate to be profits; inconsistent narrative references to a 10% tax are not adopted. Historical statutory applicability, subsequent treatment and current law remain unverified.

01 FACTS OF THE CASE

Non-resident drilling contractors entered contracts primarily with ONGC for rigs, operating personnel and oil-exploration work in India. The contracts separately stated mobilisation fees for bringing rigs from foreign locations to Indian sites. Sedco Forex International Inc., Transocean Offshore Inc. and Sedco Forex International Drilling Inc. were the lead matters. Sedco excluded mobilisation charges from its section 44BB return computation; Transocean invoked a 1% treatment and CBDT Instruction No. 1767. The orders below ultimately included the disputed receipts in the section 44BB computation, although Transocean had obtained a different result before the Tribunal (paragraphs 7-13).

The principal contracts examined provided a fixed US\$800,000 fee for moving a rig from Setubal, Portugal to an offshore Indian well, invoiced after the rig was jacked up and ready to spud, and a separate mobilisation arrangement from Muscat to an Indian entry port. The Tribunal found the agreements indivisible and the fixed fees unconnected with the actual transport cost (paragraphs 30-34). In Pride Foramer's appeal, the assessee additionally relied on the India-France treaty and challenged use of the gross contractual fee after deduction of liquidated damages (paragraphs 21-24). Revenue's sole appeal, Civil Appeal No. 3695 of 2012, concerned a different receipt: ONGC's reimbursement of the cost of tools lost in the hole (paragraph 51).

Source: [reported judgment / paragraphs 7-13 / PDF pages 12, 13, 14 / judicial text](#); [reported judgment / paragraphs 21-24 / PDF pages 19, 20, 21 / judicial text](#); [reported judgment / paragraphs 30-34 / PDF pages 23, 24, 25, 26, 27 / judicial text](#); [reported judgment / paragraphs 51 / PDF pages 36 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court corrected the High Court's suggestion that sections 5 and 9 could be disregarded whenever section 44BB applied. Section 4 supplies the charge, section 5 defines the reach of total income, and section 9 addresses income deemed to arise in India. These provisions remain relevant to non-resident income even under the special computation mechanism; section 9(1)(i), Explanation 1(a), also addresses attribution to operations in India (paragraphs 38-43).

The Court nevertheless rejected the proposition that section 44BB had no role in determining whether these receipts were income and attributable to India. The statutory receipt categories must be read with sections 5 and 9. Section 44BB(2)(a) concerns amounts paid or payable, in or outside India, for the specified services/facilities or hired plant connected with mineral-oil activity in India. Clause (b), as reproduced in paragraph 4, concerns specified activity outside India where the amount is received or deemed received in India. The mobilisation fees under the Indian drilling contracts fell within clause (a); payment abroad did not remove them from that category (paragraphs 42-48).

The fixed mobilisation fee was contractual consideration under an indivisible arrangement, not an identified reimbursement of actual expenses. The amount could be above or below the expenditure actually incurred. The contractors could not exclude that contractual fee from the specified-receipts base simply by showing that mobilisation cost more than the fee or took place partly abroad (paragraphs 46-50). For computation, section 44BB(1), reproduced in paragraph 4 and restated in paragraph 47, deems 10% of the aggregate specified amounts to be business profits; it does not itself prescribe a 10% tax rate. The source's inconsistent tax-rate language is specifically flagged below.

The lost-tools payment was different: it compensated the assessee for tools lost by ONGC and did not fall within section 44BB(2). The Court upheld exclusion on those facts and additionally noted the tax effect of Rs.15,12,344 (paragraph 51).

Source: [reported judgment / paragraphs 38-51 / PDF pages 29, 30, 31, 32, 33, 34, 35, 36 / judicial text](#); [reported judgment / paragraphs 4; statutory text reproduced / PDF pages 10, 11 / judicial text](#)

03 JUDICIAL DECISION

All assessee appeals were dismissed. Inclusion of the contractual mobilisation fees in the section 44BB receipts base was upheld, while the High Court's reasoning excluding sections 5 and 9 was corrected. Revenue's separate Civil Appeal No. 3695 of 2012 was also dismissed: compensation for the tools lost by ONGC was outside section 44BB(2) on the facts stated (paragraphs 50-51).

Source: [reported judgment / paragraphs 50-51 / PDF pages 35, 36 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Split by issue: Revenue on contractual mobilisation fees; assessee on lost-tool compensation

All assessee appeals dismissed; Revenue's Civil Appeal No. 3695 of 2012 dismissed

Final determination of the mobilisation-fee inclusion issue and the distinct lost-tool receipt issue

No rule taxing all foreign receipts or all reimbursements. The application of section 44BB was undisputed, and the mobilisation reasoning is tied to specified oilfield receipts under indivisible contracts. The treaty/PE and liquidated-damages submissions were recorded but not given separate issue-specific reasoning; no independent treaty-precedence or gross-versus-net ratio is asserted.

Source: [reported judgment / paragraphs 50-51 / PDF pages 35, 36 / judicial text](#)

05 AKHB REVIEW POINT

Separate three questions: whether the taxpayer and receipt fall within the relevant year's section 44BB; how sections 4, 5 and 9 apply; and which amounts enter the statutory receipts base. Read the fee clauses, payment trigger, place and purpose of performance, actual-cost linkage and indivisibility findings together. A label such as mobilisation reimbursement, or payment outside India, does not displace the Court's treatment of a fixed fee for the Indian drilling contract.

Do not turn this decision into a universal rule for every reimbursement. Paragraph 51 itself excludes the distinct lost-tool compensation, while the treatment of other expense reimbursements is not separately reasoned. Keep the statutory computation precise: 10% of the specified aggregate is deemed profit under the text reproduced in the judgment, rather than a freestanding 10% tax rate. The recorded India-France treaty and liquidated-damages arguments require their own source and applicable-law analysis before reliance; this judgment supplies no separate reasoning that resolves those questions generally. The proviso exclusions, lower-profit route and relevant historical text must be checked for the actual year; no present-law or 2025 Act carryover is certified.

Source: [reported judgment / paragraphs 4 / PDF pages 10, 11 / judicial text](#); [reported judgment / paragraphs 9-13 / PDF pages 13, 14 / judicial text](#); [reported judgment / paragraphs 21-24 / PDF pages 19, 20, 21 / judicial text](#); [reported judgment / paragraphs 38-51 / PDF pages 29, 30, 31, 32, 33, 34, 35, 36 / judicial text](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 4906 of 2010 / Civil Appeal No. 4908 of 2010 / Civil Appeal No. 4910 of 2010 / Civil Appeal No. 4911 of 2010 / Civil Appeal No. 4907 of 2010 / Civil Appeal No. 4913 of 2010 / Civil Appeal No. 4920 of 2010 / Civil Appeal No. 4919 of 2010 / Civil Appeal No. 4921 of 2010 / Civil Appeal No. 4916 of 2010 / Civil Appeal No. 4918 of 2010 / Civil Appeal No. 4917 of 2010 / Civil Appeal No. 4925 of 2010 / Civil Appeal No. 4924 of 2010 / Civil Appeal No. 4922 of 2010 / Civil Appeal No. 4923 of 2010 / Civil Appeal No. 4909 of 2010 / Civil Appeal No. 5935 of 2010 / Civil Appeal No. 5934 of 2010 / Civil Appeal No. 4914 of 2010 / Civil Appeal No. 4915 of 2010 / Civil Appeal No. 8595 of 2010 / Civil Appeal No. 4926 of 2010 / Civil Appeal No. 5154 of 2011 / Civil Appeal No. 5152 of 2011 / Civil Appeal No. 5153 of 2011 / Civil Appeal No. 5155 of 2011 / Civil Appeal No. 2166 of 2012 / Civil Appeal No. 3695 of 2012 / Civil Appeal No. 2631 of 2013 / Civil Appeal No. 4543 of 2013 / Civil Appeal No. 8627 of 2013 / Civil Appeal No. 9188 of 2013 / Civil Appeal No. 8665 of 2013 / Civil Appeal No. 267 of 2013 / Civil Appeal No. 268 of 2013 / Civil Appeal No. 5005 of 2014 / Civil Appeal No. 6573 of 2014 / Civil Appeal No. 6651 of 2014 / Civil Appeal No. 5437 of 2016 / Civil Appeal No. 10294 of 2016 / Civil Appeal No. 10295 of 2016 / Civil Appeal No. 10296 of 2016 / Civil Appeal No. 17388 of 2017 / Civil Appeal No. 17389 of 2017 / Civil Appeal No. 17390 of 2017 / Civil Appeal No. 17391 of 2017 / Civil Appeal No. 17392 of 2017 / Civil Appeal No. 17393 of 2017 / Civil Appeal No. 435 of 2017 / Civil Appeal No. 10382 of 2017 / Civil Appeal No. 10385 of 2017 / Civil Appeal No. 10383 of 2017 / Civil Appeal No. 10384 of 2017 / Civil Appeal No. 10386 of 2017 / Civil Appeal No. 17394 of 2017 / Civil Appeal No. 12365 of 2017 / Civil Appeal No. 12366 of 2017

DETAILED DISPOSITION AND CONNECTED GROUPS

Issue results

1.

Issue: Fixed contractual mobilisation fees for Indian drilling operations

Result: Included in section 44BB(2)(a) receipts base despite payment abroad and the expense-reimbursement argument; all assessee appeals dismissed

In whose favour: Revenue

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 33; 34; 35; 36

Paragraphs: 45-50

Source role: judicial text

2.

Issue: Effect of sections 4, 5 and 9

Result: High Court reasoning that sections 5 and 9 were inapplicable was corrected; those provisions remain relevant and operate with section 44BB

In whose favour: Assessee on the stated legal correction, without reversal of mobilisation outcome

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 29; 30; 31; 32; 33; 34

Paragraphs: 38-48

Source role: judicial text

3.

Issue: Compensation for ONGC losing tools in the hole

Result: Outside section 44BB(2) on the stated facts; Revenue appeal dismissed, with tax effect also noted

In whose favour: Assessee in Civil Appeal No. 3695 of 2012

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 36

Paragraphs: 51

Source role: judicial text

4.

Issue: Article 7/pre-PE, territorial-voyage and liquidated-damages alternatives in Pride Foramer appeal

Result: Recorded submissions; assessee appeal dismissed with the batch, without separate issue-specific reasons or express reservation

In whose favour: No separate ratio asserted

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 19; 20; 21; 35; 36

Paragraphs: 21-24; 50

Source role: judicial text

Appeal groups

1.

Appeals: All listed appeals other than Civil Appeal No. 3695 of 2012

Appellant role: Assesseees

Disposition: Dismissed

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 35; 36

Paragraphs: 50

Source role: judicial text

2.

Appeals: Civil Appeal No. 3695 of 2012

Appellant role: Director of Income Tax, New Delhi (Revenue)

Disposition: Dismissed

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 36

Paragraphs: 51

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

2(24); 2(45); 6; 28-41; 43; 43A; 44BB(3); 44AA(2); 44AB; 143(3); 42; 44D; 44DA; 115A; 293A; 44AC; 206C

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A. K. Sikri, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 36 PDF pages; SHA-256

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Judgment paragraphs 1-51 on physical PDF pages 9-36 (SCR 407-434); physical pages 1-8 are reported identity, editorial headnote, case-law references and appeal listing. No neighbouring judgment included.

Open cited source rendition

Title, date, bench and SCR citation verified against the rendered reported cover. The corpus INSC search identifier is not represented as a neutral citation printed in this rendition.

1986-87 and 1987-88 occur in the High Court passage reproduced at paragraph 37 (physical page 29) concerning Sedco mobilisation receipts. 2000-01 is expressly identified for Pride Foramer S.A., Civil Appeal No. 4543 of 2013, in paragraph 21 (physical page 19). No common assessment year, or complete appeal-by-appeal year list, is supplied for the entire batch.

The full appeal list follows the reported jurisdiction block on physical page 8; paragraph 1 additionally records leave granted in SLP(C) Nos. 2955/2012, 11560/2014, 20000/2015, 22343/2012, 22833/2012, 39683/2013 and 21939/2017. No unverified SLP-to-appeal mapping is inferred.

Section 44BB(1)-(3) is reproduced at paragraph 4. The lower-profit option, proviso exclusions and cited machinery provisions are context, not separately contested eligibility holdings. The text reproduced in the 2017 judgment is not certified as the exact statutory version governing every historical assessment year in the batch.

The preserved eSCR reported rendition is used unchanged; no separately retrieved signed-original PDF or hash is claimed. Editorial headnotes are not substituted for paragraphs 1-51.; The cover's spelling "Through It's Constituted Attorney" is retained in the case title. OCR repeatedly turns 44BB into 4488; the rendered statutory passage confirms 44BB.; Paragraphs 3, 5(e) and 49 contain narrative language describing a 10% tax or concessional flat rate. The reproduced section 44BB(1) in paragraph 4 and the opening of paragraph 47 instead state that 10% of the specified aggregate is deemed profits. The note follows that express statutory computation and does not silently reproduce the inconsistent rate description.; Paragraph 9 says various other reimbursements are not the concern of that account, while paragraphs 11-13 recite lower-court inclusion of customs-duty and operational reimbursements. Paragraphs 46-50 reason through fixed mobilisation fees; the batch dismissal is preserved without inventing a separately reasoned universal rule on all reimbursements.; Pride Foramer's Article 7 / pre-PE contention, territorial-voyage alternative and liquidated-damages net-receipt alternative appear in paragraphs 21-24. Paragraph 50 dismisses all assessee contentions but gives no separate analysis or express remand/reservation of those alternatives; a freestanding treaty or liquidated-damages holding is not attributed.; The section 44BB text quoted in the 2017 judgment includes provisions not independently checked against each historical assessment year. Neither historical eligibility nor a current statutory rate is certified for a new case.; The final editorial line says appeals disposed of; the operative judicial directions are dismissals of both distinct appeal groups, with different substantive winners.

No express reservation or remand in the operative judgment. Distinguish unseparated reasoning on the Pride Foramer alternatives from an issue expressly left open.

STATUTORY SCOPE

Historical 1961 Act judgment and its recorded statutory setting only. No automatic correspondence or precedent carryover to the Income-tax Act, 2025, and no current-law certification.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent appellate, review, stay, reversal or later judicial-treatment check has been performed. This is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 36](#)

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