

## The Principal Commissioner of Income Tax-4, Mumbai v. M/s. S.G. Asia Holdings (India) Pvt. Ltd.

Civil Appeal No. 6144 of 2019 / SLP (C) No. 12126 of 2019

[2019] 10 SCR 133 | 2019-08-13

**Where the Assessing Officer made a transfer-pricing adjustment without the reference required by CBDT Instruction No. 3/2003, should the adjustment simply be set aside, or should the matter be restored for the proper TPO-reference process?**

92 | 92CA(1)

Two-judge bench | Uday Umesh Lalit, J. | Vineet Saran, J.

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

### Decision-date conflict and historical transfer-pricing remand

Canonical pronouncement date used: 13 August 2019, from the official SCI result and Record of Proceedings. The SCR cover, frozen catalogue and original judgment signature block print 13 August 2018. The judgment challenges a High Court order of 27 August 2018 and bears Civil Appeal No. 6144 of 2019. The conflict remains disclosed; no formal correction is certified. The pricing merits remain open. Instruction No. 3/2003, including its quoted Rs. 5-crore threshold, is expressly labelled superseded by Instruction No. 15/2015 in the judgment. This note does not certify current transfer-pricing procedure, the unnamed assessment year, later treatment or an Income-tax Act, 2025 mapping.

[paragraphs SCR title date and Civil Appeal number; 1 / PDF pages 1, 2 / reported metadata and judicial text; paragraphs Title/running header, paragraph 1 and digital-signature annotation / PDF pages 1 / official pdf metadata and judicial text; paragraphs Signature block after paragraph 10 / PDF pages 11 / official judgment signature block](#)

### 01 FACTS OF THE CASE

The assessee received brokerage from its parent company. The Assessing Officer sought details about the parent, its alleged arbitrage activity and the brokerage rate. Finding the charged rate of 0.05% lower than prevailing market rates, the Officer added Rs. 2,89,82,746 under section 92 in the section 143(3) assessment dated 27 December 2007. CIT(A) confirmed the addition on 16 February 2009 (paragraph 2(A)-(B)).

The Tribunal's order of 22 April 2015 in ITA No. 2399/Mum/2009 held that making the transfer-pricing adjustment without a TPO reference breached CBDT Instruction No. 3/2003 dated 20 May 2003. It distinguished the otherwise good assessment from the bad transfer-pricing adjustment, declined the Departmental Representative's request to remit for a reference, and expressly did not decide the pricing merits. Bombay High Court affirmed in Income Tax Appeal No. 281 of 2016 on 27 August 2018. Revenue appealed (paragraphs 1-3).

Source: [reported judgment / paragraphs 1-3 / PDF pages 2, 3, 4 / judicial text](#)

## 02 DISCUSSION BY THE HON'BLE COURT

The Court reproduced Instruction No. 3/2003 and considered Revenue's argument that section 92CA left reference to the Assessing Officer's discretion. The historical instruction directed reference where aggregate international transactions exceeded Rs. 5 crore, required the appropriate prior approval, and directed the Officer to await the TPO report while examining other aspects of the assessment. It also described the reference as transaction- and enterprise-specific and addressed the subsequent hearing and income computation (paragraphs 4-6).

In light of those guidelines, the Court agreed that failure to make the reference breached the mandatory CBDT instruction. It did not accept the suggested discretion as a reason to disregard that instruction on the case before it (paragraph 7).

However, the Tribunal should have accepted Revenue's request to restore the matter to the Assessing Officer for an appropriate reference. The authorities and the Commissioner concerned were to consider the matter under section 92CA(1), with appropriate steps by the Assessing Officer under Instruction No. 3/2003 (paragraphs 8-9). That procedural restoration did not decide the correct arm's-length price or validate the original quantum.

Source: [reported judgment / paragraphs 4-9, including quoted historical instruction / PDF pages 4, 5, 6, 7, 8, 9, 10 / judicial text](#)

## 03 JUDICIAL DECISION

Revenue's appeal was allowed only to the stated extent: the matter was restored to the Assessing Officer so that an appropriate TPO reference could be made, leaving the authorities and Commissioner to consider it under section 92CA(1) and the Officer to take appropriate steps under Instruction No. 3/2003. There were no costs (paragraphs 8-10).

Source: [reported judgment / paragraphs 8-10 / PDF pages 10 / judicial text](#)

## 04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue to the limited extent of obtaining a remand; assessee's procedural objection to the non-reference sustained

Appeal allowed to the limited extent stated; matter restored for the proper reference process; no costs

Transfer-pricing merits and ultimate quantum remain open; the original addition is not affirmed on merits

The Supreme Court upheld the finding that mandatory instructions were breached but corrected the refusal to restore the matter. It did not annul the whole assessment or order universal TPO reference in every possible case.

Source: [reported judgment / paragraphs 2\(C\), 7-10 / PDF pages 3, 4, 9, 10 / judicial text](#)

**05 AKHB REVIEW POINT**

Separate the rule breached from the remedy. The taxpayer retained the benefit of the finding that the Officer had bypassed a mandatory reference, but that error did not produce permanent deletion immune from a proper fresh process. Revenue obtained restoration, not a merits ruling approving 0.05% comparability or the Rs. 2,89,82,746 adjustment. Check the applicable instruction and statutory version before using the historical Rs. 5-crore threshold or reference scope: the judgment's own reproduction labels Instruction No. 3/2003 as superseded by Instruction No. 15/2015. The assessee's assessment year and actual aggregate transaction value are not supplied in the judgment and must not be inferred from that quotation.

Source: [reported judgment / paragraphs 4 \(supersession label and historical threshold\), 7-10 / PDF pages 4, 6, 9, 10 / judicial text](#)

**DETAILED DISPOSITION AND CONNECTED GROUPS****Issue results**

1.

**Issue:** Failure to make the required TPO reference

**Result:** Finding of breach of mandatory Instruction No. 3/2003 upheld

**In whose favour:** Assessee on procedural invalidity of the impugned adjustment

**Pinpoints**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 9

**Paragraphs:** 5-7

**Source role:** judicial text

2.

**Issue:** Tribunal's refusal to restore the matter

**Result:** Reversed to permit the appropriate reference process under section 92CA(1) and the instruction

**In whose favour:** Revenue to this limited extent

**Pinpoints**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 10

**Paragraphs:** 8-10

**Source role:** judicial text

3.

**Issue:** Arm's-length price, comparable brokerage rate and addition quantum

**Result:** Not determined by the Supreme Court; remain for consideration through the proper process

**In whose favour:** Left open

**Pinpoints**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 3; 4

**Paragraphs:** 2(C), quoting Tribunal paragraphs 16.1-18

**Source role:** judicial text

2.

**Source url:** [Open cited source](#)

**Pdf pages:** 10

**Paragraphs:** 8-10

**Source role:** judicial text

### **ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS**

92C; 92CA(3); 92CA(4); 119; 143(3); 120; 92A; 92B; 92D; 92F

### **JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS**

Uday Umesh Lalit, J.

### **ACT IDENTIFIED IN THE REVIEWED SOURCE**

Income-tax Act, 1961

### **UNRESOLVED PRINTED-DATE CONFLICT AND IDENTIFIED OFFICIAL EVIDENCE**

**Canonical date used:** 2019-08-13

**Canonical basis:** Official SCI free-text result dated 13-08-2019 and cached official result-page Record of Proceedings expressly dated 13-08-2019

**Frozen index date:** 2018-08-13

**Reported cover date:** 2018-08-13

**Official original signature date:** 2018-08-13

**Official original digital signature annotation:** 2019-08-13

**High court order challenged:** 2018-08-27

**Conflict status:** Visible unresolved printed-source conflict; pronouncement date selected on separate official evidence, not silent correction

**Source index modified:** False

### **Evidence**

1.

**Source url:** [Open cited source](#)

**Pdf pages:** 1; 2

**Paragraphs:** SCR title date and Civil Appeal number; 1

**Source role:** reported metadata and judicial text

2.

**Source url:** [Open cited source](#)

**Pdf pages:** 1

**Paragraphs:** Title/running header, paragraph 1 and digital-signature annotation

**Source role:** official pdf metadata and judicial text

3.

**Source url:** [Open cited source](#)

**Pdf pages:** 11

**Paragraphs:** Signature block after paragraph 10

**Source role:** official judgment signature block

**Official search url:** [Open cited source](#)

## SOURCE & VERIFICATION

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

Identified source rendition: 10 PDF pages; SHA-256

1a182acc40959dc5e374cff446f6c10704325cd5a3d2430e9f12ee23d513d934. Original bytes preserved.

Paragraphs 1-10 on physical pages 2-10; preceding pages are editorial headnote, identity and appearance material. No neighbouring judgment text included.

### Open cited source rendition

The assessee's assessment year is not stated in the bounded judgment. AY 2002-03 appears only in the quoted 2003 instruction's implementation history and is not assigned to this appeal.

Civil Appeal No. 6144 of 2019 appears on the SCR cover and official title. The official running header also identifies SLP(C) No. 12126 of 2019; no additional appeals are included.

The dispute concerns a section 92 transfer-pricing adjustment and the proper reference process under section 92CA(1) with CBDT Instruction No. 3/2003. Sections 92C/92CA(3)-(4) and 119 occur in the operative instruction; 120 and other 92-series references are quoted instruction/annexure context, not separately decided holdings.

13 August 2019 is used as the canonical pronouncement date on the explicit basis of the cached official SCI result and the official result-page Record of Proceedings dated 13-08-2019. It is corroborated by the original PDF's Civil Appeal/SLP numbers for 2019 and its page 1 digital-signature annotation dated 2019.08.13. The frozen index, SCR cover and original page 11 signature block print 13 August 2018. Those source values are retained and have not been repaired. Paragraph 1 challenges a High Court order of 27 August 2018, making the printed 13 August 2018 chronology inconsistent. No formal judicial corrigendum was reviewed or certified.

Prominent date conflict: the frozen index and SCR cover say 13 August 2018; the original signed PDF also prints that date at its signature block. The note uses 13 August 2019 only because the official SCI result and Record of Proceedings expressly support that pronouncement date. No formal corrigendum is certified, and original sources remain unchanged.; The official original title says Holdings, while the running header uses Holding and abbreviates India as (I). The note follows the full title.; The recorded assessment year is not given. AY 2002-03 in the instruction is implementation background, not the case's assessment year.; The judgment does not state the actual aggregate value of the assessee's international transactions. The historical Rs. 5-crore threshold is an instruction quotation, not a new finding about transaction value.; The quoted instruction includes historical reference-scope and approval mechanics and is expressly labelled superseded by Instruction No. 15/2015 dated 16 October 2015. No present-day universal threshold, TPO jurisdiction or reference duty is certified.; Printed Form No. 2CEB and the later subheading (vi) are retained source anomalies within the quoted instruction; this note does not silently correct them or rely on them as current procedural guidance.; The Tribunal's quoted statement that the assessment is good but its transfer-pricing adjustment is bad is distinguished from the Supreme Court's own limited remand. No merits finding or full-assessment annulment is attributed to the Supreme Court.

**STATUTORY SCOPE**

Historical assessment-year and statutory setting only. No automatic mapping to the Income-tax Act, 2025.

**LATER TREATMENT**

Source checked 2026-10-04. No comprehensive subsequent-treatment or current-law search has been performed. Authorities discussed in the judgment are reported as its own reasoning, not as a separately verified later-treatment chain.

**IDENTIFIED SOURCE LINKS**

[reported judgment - PDF pages: 10](#)

SHA-256: 1a182acc40959dc5e374cff446f6c10704325cd5a3d2430e9f12ee23d513d934

[official signed judgment - PDF pages: 11](#)

SHA-256: 0f38f682b69e9cf2c75e274a255a60aa10010878bb96332a0682a4e11ed9ed9a

**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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