

Director of Income Tax-II (International Taxation), New Delhi & Anr. v. Samsung Heavy Industries Co. Ltd.

Civil Appeal No. 12183 of 2016

[2020] 6 SCR 486 | 2020-07-22

Whether Samsung's Mumbai Project Office was a fixed-place permanent establishment under the India-Korea DTAA through which its core business was carried on, permitting taxation of allegedly offshore revenues, or an auxiliary liaison office excluded by Article 5(4)(e); and whether Revenue had established the necessary PE and attribution basis.

Three-judge bench | R. F. Nariman, J. | Navin Sinha, J. | B. R. Gavai, J.

Assessment years: 2007-08

01 FACTS OF THE CASE

ONGC awarded a turnkey Vasai East Development Project contract on 28 February 2006 to a consortium including South Korean Samsung Heavy Industries and Larsen & Toubro. The work included surveys, engineering, procurement, fabrication, installation, modification and commissioning. Samsung opened a Mumbai Project Office on 24 May 2006, which it said was a communication channel with ONGC. Offshore preliminary and fabrication activities occurred in 2006; platforms began arriving for installation in November 2007 (paragraphs 1-3).

For AY 2007-08 Samsung returned nil profit, asserting a Rs. 23.5 lakh loss from its Indian activities. Treating the project as indivisible and the Mumbai office as a PE, the Assessing Officer attributed 25% of allegedly offshore revenues of Rs. 113,43,78,960 to India, amounting to Rs. 28,35,94,740. The Dispute Resolution Panel supported that approach. The Tribunal upheld the PE finding but set aside the 25% attribution and remitted quantification for factual examination (paragraphs 4-10).

The Uttarakhand High Court allowed Samsung's appeal on the absence of an established basis for attributing that revenue to the Indian establishment. Revenue appealed to the Supreme Court, relying on the turnkey contract, project-office documents and alleged core role. Samsung relied on the complete board resolution, the absence of contract-execution expenditure in the office accounts and the fact that its two employees were not qualified to perform its core activity (paragraphs 11-14).

Source: [reported judgment / paragraphs 1-14 / PDF pages 4, 5, 6, 7, 8, 9, 10, 11 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court first set out the applicable treaty text. Article 5(1) required a fixed place through which the enterprise's business was wholly or partly carried on; the listing of an office in Article 5(2) had to be read with that functional requirement and the exclusions. Article 5(4)(e) excluded a fixed place maintained solely for activities preparatory or auxiliary in the enterprise's trade or business. Article 7 allowed taxation in the other State only to the extent of profits attributable to a qualifying PE, assessed on the relevant separate-enterprise basis (paragraphs 15-16 and 23).

Morgan Stanley, Hyundai Heavy Industries, Ishikawajima-Harima and E-Funds were considered for the functional, factual and attribution principles. The discussion of different treaties and PE types supplied reasoning; it did not transplant every quoted article number or resolve every possible PE theory in Samsung's case. In particular, the initial burden of establishing that a foreign enterprise has a PE in India rests on Revenue. A contract's turnkey label does not itself prove that the local office carried on the enterprise's core business or earned the offshore profits (paragraphs 17-23 and 27).

The decisive document was the entire board resolution, not its opening sentence alone. Read as a whole with the RBI application and approval, it authorised establishment of the office and coordination and execution of delivery of documents connected with the offshore-platform work. The Tribunal had relied selectively on the first clause to infer coordination and execution of the project itself. The Supreme Court held that core-activity finding perverse (paragraphs 24-27).

The Tribunal had also dismissed the office accounts merely because the assessee maintained them, notwithstanding their indication that no execution-related expenditure was incurred. The Court rejected that approach and the reversal of the initial PE burden. The Tribunal also ignored the two employees' lack of qualifications to perform the company's core activity. On this record the Mumbai office was solely auxiliary, serving liaison between Samsung and ONGC; no fixed-place PE under Article 5(1) had been established, and Article 5(4)(e) applied (paragraphs 27-28).

Having decided the PE issue, the Court expressly found it unnecessary to address the remaining arguments. It therefore did not calculate an alternative attribution percentage, determine that overall project losses always bar PE taxation, or decide a construction/installation PE issue for later activities. Its dismissal of Revenue's appeal was expressly for its own reasons, rather than a wholesale adoption of the High Court's treatment of every question (paragraphs 28-29).

Source: [reported judgment / paragraphs 15-16 / PDF pages 11, 12, 13 / judgment](#); [reported judgment / paragraphs 17-23 / PDF pages 13, 14, 15, 16, 17, 18, 19 / judgment](#); [reported judgment / paragraphs 24-28 / PDF pages 19, 20, 21, 22 / judgment](#); [official signed judgment / paragraphs 15-16; 23; 25-28 / PDF pages 13, 14, 15, 23, 25, 26, 27, 28 / judgment](#)

03 JUDICIAL DECISION

Revenue's appeal was dismissed for the Supreme Court's stated reasons. Samsung's Mumbai Project Office was not a fixed-place PE under Article 5(1) on the established facts and was an auxiliary liaison office within Article 5(4)(e). The Tribunal's contrary core-activity and burden findings were rejected as described in paragraphs 27-28. The Court did not reach the other argued questions or order a fresh attribution remand (paragraphs 27-29).

Source: [reported judgment / paragraphs 27-29 / PDF pages 21, 22 / judgment](#); [official signed judgment / paragraphs 27-29 / PDF pages 26, 27, 28 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, Samsung Heavy Industries Co. Ltd.

Revenue appeal dismissed, for the Supreme Court's own reasons

Fact-specific final determination of the Mumbai fixed-place/auxiliary-office PE issue; remaining questions not reached

No blanket project-office immunity. The result rests on actual functions, the complete resolution, accounts, employee capabilities and Revenue's unfulfilled initial burden under the treaty version governing AY 2007-08. No universal offshore-profit, loss or later installation-PE ruling is made.

Source: [official signed judgment / paragraphs 29 / PDF pages 28 / judgment](#)

05 AKHB REVIEW POINT

Prepare a functional evidence file before arguing attribution: the complete corporate resolutions, RBI correspondence, staff roles and qualifications, office expenditure, communications and evidence of where core work was performed. Office registration or the word project is not a substitute for establishing the activities through which the enterprise's business was carried on. Equally, a taxpayer cannot assume that every project office is auxiliary; the actual record controls.

Keep the questions in sequence. First establish the applicable treaty and whether the particular PE conditions are met. Then, if a PE exists, identify the activities and profits attributable to it. The initial PE burden lies on Revenue, while the accounts and functional evidence remain practically important. Samsung does not fix a safe attribution percentage or decide the alternative loss-based argument.

Use the India-Korea provisions quoted for AY 2007-08, not an assumed universal treaty template. Check the applicable treaty version, later amendments and judicial treatment for another year, and examine later installation or other PE facts separately. No automatic Income-tax Act, 2025 carryover or present treaty certification is made.

Source: [reported judgment / paragraphs 15-16; 21-29 / PDF pages 11, 12, 13, 17, 18, 19, 20, 21, 22 / judgment](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

4(2); 9; 90; 90(2)

PROVISION-SPECIFIC SCOPE

1.

Act: India-Republic of Korea DTAA, version quoted in the judgment

Section: Articles 5(1), 5(2) and 5(4)(e)

Role: principal PE provisions applied

Basis: Actual core-business functions, rather than the project-office label alone, determine fixed-place PE status; the office was auxiliary on these facts.

2.

Act: India-Republic of Korea DTAA, version quoted in the judgment

Section: Article 7(1)-(2)

Role: attribution framework

Basis: Only profits attributable to a qualifying PE are taxable in the other State; a distinct-and-separate-enterprise attribution standard is quoted.

3.

Act: India-Republic of Korea DTAA, version quoted in the judgment

Section: Article 5(3)

Role: quoted context, not independent duration holding

Basis: The judgment reproduces a more-than-nine-month construction/installation provision but disposes of the case on the Mumbai fixed-place/auxiliary-office issue.

4.

Act: Income-tax Act, 1961

Section: 4(2); 9; 90; 90(2)

Role: statutory context through cited authorities

Basis: These occur in discussion of Ishikawajma-Harima and E-Funds. The direct ratio is treaty-based; no separate current section 9 or section 90 amendment issue is decided.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R. F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

TREATY PROVISIONS AND THEIR SCOPE

India-Republic of Korea DTAA, Article 5(1); Article 5(2); Article 5(4)(e); Article 7(1)-(2)

SOURCE & VERIFICATION

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

Identified source rendition: 28 PDF pages; SHA-256 e65fe1f5be5e715f62602dcb873a29b6acc7fd206daaac7766d112d1c9b03dbb. Original bytes preserved. Official judgment paragraphs 1-29 on physical pages 1-28; paragraph 29, three judge signatures and date on page 28.

Cover, signatures/date, selected substantive passages and operative disposition checked against the fully read reported judicial text; not a claim that every page of the separate official rendition was independently reread.

[Open cited source rendition](#)

The catalogue's two-judge bench entry is incorrect: both reported cover and official signatures confirm R. F. Nariman, Navin Sinha and B. R. Gavai.

The title project office and the resolution's first clause were insufficient to prove core business activity; the judgment relies on the full resolution and actual functions.

Other treaty provisions and PE categories appear in cited precedents; they are not independent determinations of all Samsung PE possibilities.

The High Court result was left standing for the Supreme Court's different reasons; alternative attribution, overall-loss and other questions were not reached.

Reported citation verified on the reported cover. No neutral citation inferred from catalogue metadata.

AY 2007-08 is specified in paragraph 4. The finding concerns the Mumbai office's functions in the assessment under appeal; later installation activities are not independently adjudicated.

STATUTORY SCOPE

India-Republic of Korea DTAA Articles 5 and 7 as quoted and applied for AY 2007-08; sections 4, 9 and 90 occur as contextual references through cited precedents.

No automatic Income-tax Act, 2025 crosswalk, present-law certification or comprehensive later-treatment audit.

LATER TREATMENT

Source checked 2026-10-04. Subsequent judicial treatment and later statutory or treaty changes have not been comprehensively verified. References to earlier decisions describe their treatment in this judgment only.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 28](#)

SHA-256: e65fe1f5be5e715f62602dcb873a29b6acc7fd206daaac7766d112d1c9b03dbb

[reported judgment - PDF pages: 22](#)

SHA-256: 08138ecab5cf171a6b02dbc780a82bfca1b0e6d2384f697a7e11142686df9d7b

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