

National Petroleum Construction Company v. Deputy Commissioner of Income Tax, Circle 2(2), International Taxation, New Delhi & Anr.

Civil Appeal No. 4964 of 2022 (arising out of SLP(C) No. 9233 of 2020)

[2022] 17 S.C.R. 236 | 2022-07-29

Whether the section 197 certificate prescribing 4% withholding on ONGC receipts for both offshore and onshore activities should be disturbed, considering earlier certificates, the prescribed Rule 28AA inquiry, disputed permanent-establishment facts and the taxpayer's without-prejudice request for that rate.

197 | 195(1)

Two-judge bench; separate disagreeing opinions | Indira Banerjee, J. | J. K. Maheshwari, J.

Assessment years: 2020-21

Divided bench: no final common merits outcome in this source

The two judges proposed opposite results. The joint order refers the matter to the Chief Justice for an appropriate Bench; neither opinion is presented as a majority holding. Later resolution and present status have not been verified.

01 FACTS OF THE CASE

The UAE-resident company performed petroleum-platform and pipeline work for ONGC, involving Indian and overseas activities. For FY 2019-20 it sought a section 197 certificate allowing nil withholding on offshore receipts under the relevant LEWPP and R-series contracts. Earlier litigation and certificates had addressed offshore receipts and permanent-establishment questions. After departmental queries and delay, the company's letter dated 22 June 2019 offered, without prejudice to its legal position and citing financial hardship, to accept 4% plus applicable surcharge and cess on the entire contractual revenue. A certificate dated 26 June 2019 prescribed 4% TDS for receipts from activities both outside and inside India. The Delhi High Court dismissed the company's challenge. The Supreme Court heard its appeal but the two judges disagreed on the proper result.

Source: [official signed judgments and joint order / paragraphs Banerjee opinion 2-3; 20-29 / PDF pages 1, 2, 6, 7, 8, 9, 10 / judgment](#); [reported rendition / paragraphs Banerjee opinion 2-3; 20-29 / PDF pages 2, 3, 6, 7, 8 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Indira Banerjee, J. would have dismissed the appeal. She distinguished the limited and time-sensitive section 197 inquiry from a full assessment of permanent-establishment facts, which could vary from year to year. She accepted the High Court's refusal to finally determine the disputed PE issue in these proceedings and referred to adverse recent assessment findings. Although she acknowledged that non-chargeable sums do not attract withholding, she regarded the certificate as having been issued on the taxpayer's own request. In her view, the without-prejudice qualification preserved contentions in assessment and other proceedings, but did not permit this writ challenge to the requested certificate. She stressed that the final assessment and any appeal remained uninfluenced by the observations and that excess TDS could be refunded with interest (Banerjee opinion, paragraphs 36-48).

J. K. Maheshwari, J. would have allowed the appeal to the extent of setting aside the High Court decision and requiring reconsideration of the certificate application under the prescribed procedure. He concentrated on section 197 and Rule 28AA: the officer must address existing and estimated tax liability, relevant prior-year income, existing liabilities and tax already paid or deducted. He found the notes did not demonstrate that required exercise and considered the earlier nil-withholding certificates for both contracts material. In his view, unchanged circumstances called for consistency, and a financially compelled without-prejudice letter did not excuse non-compliance with the prescribed inquiry. He also recorded CIT(A) orders dated 8 September 2021 allowing the company's appeals for AYs 2016-17 and 2017-18. His proposed certificate relief remained provisional, subject to assessment of returned income (Maheshwari opinion, paragraphs 9-21).

These are opposed judicial opinions, not alternative limbs of a single binding majority conclusion. Their different accounts of prior assessments and appellate events must not be combined into an unqualified current PE finding. The joint order records the disagreement and directs placement before the Chief Justice for an appropriate Bench.

Source: [official signed judgments and joint order / paragraphs Banerjee opinion 36-48 / PDF pages 14, 15, 16, 17, 18, 19 / judgment](#); [official signed judgments and joint order / paragraphs Maheshwari opinion 9-21 / PDF pages 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 / judgment](#); [reported rendition / paragraphs Banerjee opinion 36-48 / PDF pages 12, 13, 14, 15 / judgment](#); [reported rendition / paragraphs Maheshwari opinion 9-21 / PDF pages 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 / judgment](#); [official signed judgments and joint order / paragraphs Joint order / PDF pages 43 / judgment](#)

03 JUDICIAL DECISION

The operative joint order granted leave and directed the Registry to place the matter before the Chief Justice of India so that an appropriate Bench could be constituted. Banerjee J.'s proposed dismissal and Maheshwari J.'s proposed allowance/reconsideration are the individual outcomes of their respective opinions. The joint order did not finally allow or dismiss the appeal, issue a nil-rate certificate, affirm a general 4% rate, or conclusively determine the company's PE or final tax liability.

Source: [official signed judgments and joint order / paragraphs Banerjee opinion 48; Maheshwari opinion 20-21; joint order / PDF pages 19, 42, 43 / judgment; reported rendition / paragraphs Banerjee opinion 48; Maheshwari opinion 20-21; joint order / PDF pages 15, 26, 27 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: No final common merits outcome in this source

Difference of opinion; matter directed to the Chief Justice for constitution of an appropriate Bench

Two opposing opinions; no majority disposal of the certificate dispute

This is the position recorded on 29 July 2022 only. Later reference proceedings, resolution and present case status have not been verified.

Source: [official signed judgments and joint order / paragraphs Joint order / PDF pages 43 / judgment; reported rendition / paragraphs Joint order / PDF pages 27 / judgment](#)

05 AKHB REVIEW POINT

Start with the joint reference order before using either opinion. A research note or submission must identify the judge whose reasoning is cited and must not describe this source as a settled Supreme Court rule granting or denying a nil certificate. For the practical file, distinguish provisional withholding from final assessment, assemble the Rule 28AA inputs, compare contract terms and activities across the relevant years, and preserve the wording and circumstances of any without-prejudice request. Treat historic certificate rates and disputed PE findings as case-specific. Obtain the later reference outcome and current statutory/treaty text before relying on either proposed approach.

Source: [official signed judgments and joint order / paragraphs Banerjee opinion 42-47; Maheshwari opinion 11-19; joint order / PDF pages 17, 18, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 / judgment; reported rendition / paragraphs Banerjee opinion 42-47; Maheshwari opinion 11-19; joint order / PDF pages 14, 15, 21, 22, 23, 24, 25, 26, 27 / judgment](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Individual opinions

1.

Judge: Indira Banerjee, J.

Proposed result: Dismiss the appeal; leave final assessment and refund rights unaffected

2.

Judge: J. K. Maheshwari, J.

Proposed result: Allow to the stated extent; set aside the High Court decision and reconsider the application under the prescribed procedure

RULES CONSIDERED

Income-tax Rules, 1962: Rules 28 and 28AA

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

5(2); 6(3); 44BB; 90; 143

TREATY CONTEXT

India-United Arab Emirates agreement: permanent establishment and business profits, including Article 7(1) and 7(6) discussed in Maheshwari J.'s opinion

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgments and joint order\)](#)

Identified source rendition: 43 PDF pages; SHA-256
95719b5b90786cd0dad550003e32680dfb43ec43795f31fb5fd7c0ca598dd24b. Original bytes preserved.

[Open cited source rendition](#)

The singular reported asset contains two separately numbered opinions and a distinct joint order. A sentence reading "appeal dismissed" or "appeal allowed" within either opinion is not the common disposition.

Both opinions distinguish withholding machinery from final assessment, but disagree on its application here. No uniform PE, chargeability or certificate-rate outcome is extracted.

Banerjee J. refers to adverse preceding assessments and pending appeals; Maheshwari J. records subsequent CIT(A) orders produced at the hearing. Their accounts remain attributed, not silently reconciled.

The historic 4% figure, surcharge/cess reference and prior nil certificates are case facts, not current rates for all non-resident contracts.

Assessment years from quoted cases and older contract disputes are not added to the case's AY coverage.

The source contains section-number/chapter slips within Maheshwari J.'s explanatory discussion; these are not imported as independent legal rules. The core section 197 and Rule 28AA issue is preserved.

No later resolution of this reference or present case status has been verified.

The challenged certificate concerned FY 2019-20, corresponding to AY 2020-21. Earlier assessments and certificates are background, not additional assessment years finally disposed of by this source.

STATUTORY SCOPE

Historical 1961 Act/Rule 28AA provisions and treaty discussion as quoted in the opposed opinions

No independent current legislation or treaty audit; no automatic 2025 Act mapping. The division itself prevents treating either proposed merits conclusion as a common holding.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official signed judgments and joint order - PDF pages: 43](#)

SHA-256: 95719b5b90786cd0dad550003e32680dfb43ec43795f31fb5fd7c0ca598dd24b

[reported rendition - PDF pages: 27](#)

SHA-256: 4e10f2f031722af259e55628d02de1590fe623dd076657305284d636317581ce

AI DISCLOSURE

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