

Director of Income Tax (IT)-I, Mumbai v. M/s. American Express Bank Ltd.

Civil Appeal No. 8291 of 2015 / Civil Appeal No. 4451 of 2016

2025 INSC 1431 | 2025-12-15

Whether overseas head-office expenditure incurred exclusively for a non-resident's Indian branches is outside section 44C, and whether all disputed expenses had been properly classified as head-office expenditure under its Explanation.

44C | 37(1)

Two-judge bench | J.B. Pardiwala, J. | K.V. Viswanathan, J.

Assessment years: 1997-98, 2003-04

01 FACTS OF THE CASE

American Express Bank, a non-resident banking company, claimed deductions under section 37(1) for AY 1997-98 of Rs 6,39,13,217 for solicitation of deposits from non-resident Indians and Rs 13,50,87,275 incurred at the head office directly in relation to Indian branches. The Assessing Officer applied section 44C and the CIT(A) affirmed. The Tribunal allowed the claims on the basis that exclusive Indian-branch expenses were outside section 44C; the Bombay High Court dismissed the Revenue's appeal on that issue by following Emirates Commercial Bank. In the connected appeal, Oman International Bank returned a loss for AY 2003-04 and claimed Rs 21,63,436 of expenses incurred specifically for Indian branches: Rs 21,14,096 in travel expenses and Rs 49,340 in certification fees. Its claim was restricted by the Assessing Officer but succeeded before the appellate authorities and the High Court on the same common-versus-exclusive distinction. The Revenue appealed in both matters. A further issue concerning interest received from the head office in the Oman appeal was neither pressed nor argued; the Supreme Court confined its consideration to head-office expenditure.

Source: [paragraphs 3-10 / PDF pages 3, 4, 5, 6](#); [paragraphs 11-18 / PDF pages 6, 7, 8, 9](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court read section 44C as a special, overriding restriction on deduction quantum. Once the assessee is non-resident and the expense qualifies as head-office expenditure, section 37(1) cannot bypass the ceiling. Under the reproduced statutory text, the allowable amount is limited to the lower of actual attributable head-office expenditure and 5% of adjusted total income; where adjusted total income is a loss, the proviso uses average adjusted total income for the 5% limb. The judgment does not make a final numerical computation for either assessee.

Exclusive Indian-branch expenditure is necessarily attributable to the Indian business. Neither the Explanation nor clause (c) adds a condition that an expense must be shared with overseas business. Reading in that distinction would add words to the statute. The legislative history concerning inflated foreign-expense claims did not justify an exception for exclusive expenses. The Court held that the Bombay High Court's contrary view in Emirates Commercial Bank did not correctly state the law. It distinguished Rupenjuli Tea, which turned on business operations being confined to India, and explained that the Supreme Court's 2008 orders in Deutsche Bank and Emirates did not establish a binding rule excluding exclusive expenditure: those orders proceeded on the Revenue's acceptance of Rupenjuli Tea. Article 7(3) of the India-USA treaty, invoked by American Express, expressly subjected the deduction to limitations of Indian tax law and did not displace section 44C.

The Court also rejected the Revenue's proposition that any overseas executive or general-administrative expense automatically fits the definition. Paragraphs 74-75 prescribe three cumulative conditions: the expense was incurred outside India; it was executive or general-administrative in nature; and it fell within a specific category enumerated in Explanation (iv)(a), (b) or (c), or prescribed under clause (d). Treating the definition as unrestricted would deprive the prescription requirement in clause (d) of effect. The lower authorities had not adequately performed this category-specific factual inquiry. The Court therefore required fresh ITAT scrutiny of disputed items, while expenses whose classification the assessee did not contest would remain subject to section 44C.

Source: [paragraphs 19-20, 42-49 / PDF pages 9, 10, 30, 31, 32, 33](#); [paragraphs 54-71 / PDF pages 39, 40, 41, 42, 43, 44, 45, 46, 47, 48](#); [paragraphs 72-85 / PDF pages 48, 49, 50, 51, 52, 53](#)

03 JUDICIAL DECISION

The legal question was answered in favour of the Revenue: qualifying head-office expenditure remains within section 44C whether shared or incurred exclusively for Indian branches. Both Revenue appeals were allowed. The matters were remanded to the Income Tax Appellate Tribunal, Mumbai, for the limited purpose of verifying whether the disputed expenses satisfy the three-part statutory classification test. The Court did not finally classify every expense or quantify the allowable deductions.

Source: [paragraphs 85-91 / PDF pages 53, 54, 55, 56](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the question of law; disputed expense classification remanded

Both Revenue appeals allowed, with a limited remand to ITAT Mumbai

Substantive interpretation of section 44C decided; individual disputed expense classification and resulting quantum not finally decided

This is not a blanket final disallowance of every claimed expense. The head-office interest issue in CA 4451/2016 was not pressed or decided. The treaty discussion concerns the quoted India-USA Article 7(3).

Source: [paragraphs 18 / PDF pages 8, 9](#); [paragraphs 83-91 / PDF pages 52, 53, 54, 55, 56](#)

05 AKHB REVIEW POINT

For a legacy-year head-office-expense claim, build an item-level schedule showing where each cost was incurred, its function, the exact enumerated or prescribed category relied upon, the Indian-business nexus and the evidence supporting the amount. An exclusive-India label does not remove a qualifying item from section 44C, but a general-administration label alone does not establish the statutory category either. Keep classification, attribution and ceiling computation as separate steps; use adjusted total income and, where applicable, the loss proviso rather than treating the cap as 5% of gross income. Review the exact treaty wording before assuming the India-USA conclusion applies elsewhere. For these appeals, any final monetary result requires the remand outcome. This note applies the 1961 Act as considered for the identified assessment years; it makes no automatic crosswalk or precedent-equivalence claim under the Income-tax Act, 2025.

Source: [paragraphs 20 / PDF pages 9, 10](#); [paragraphs 44-49, 60-63 / PDF pages 31, 32, 33, 42, 43](#); [paragraphs 69, 74-75, 83-90 / PDF pages 46, 47, 48, 49, 52, 53, 54, 55](#)

CONNECTED APPEAL: Civil Appeal No. 8291 of 2015

assessee: M/s American Express Bank Ltd.

assessment year: 1997-98

disposition: Appeal allowed; disputed classification remanded to ITAT Mumbai

in whose favour: Revenue on the common/exclusive issue

CONNECTED APPEAL: Civil Appeal No. 4451 of 2016

assessee: M/s Oman International Bank

assessment year: 2003-04

disposition: Appeal allowed; disputed classification remanded to ITAT Mumbai; separate head-office interest issue not adjudicated

in whose favour: Revenue on the common/exclusive issue

SOURCE & VERIFICATION

[Original Hon'ble Supreme Court PDF](#)

Whole 56-page signed judgment; cover followed by printed judgment pages 1-55; paragraphs 1-91; no neighbouring judgment included.

Open cited source rendition

The official PDF contains 56 physical pages; its printed judgment numbering is 1-55 after the unnumbered cover. All pdf_pages fields use physical PDF page numbers.

Paragraph 87 uses the words broad and inclusive when addressing common versus exclusive expenditure. Paragraphs 74-75, 85, 86(c) and 89 expressly require enumerated/prescribed categories and describe a restrictive or exhaustive definition. This note retains the three-part test and flags the textual tension rather than treating paragraph 87 as permission to disregard it.

Paragraph 14 prints Act, 1962 in one sentence. The caption, statutory discussion and operative conclusion concern the Income-tax Act, 1961; the isolated reference is not treated as a different statute.

Paragraph 6 describes the Assessing Officer as using gross total income. The statutory text at paragraph 20 and the Court's own formulation use adjusted total income, with the loss proviso. The note does not adopt the historical description as the governing formula.

The 1987-88, 2001-02, 2002-03, 1998-99 and 1999-2000 references relate to earlier proceedings; only AYs 1997-98 and 2003-04 are assigned to the present appeals.

Rupenjuli Tea was distinguished by the nature of the assessee's business operations; it is not described as overruled. Emirates Commercial Bank's common/exclusive proposition was rejected.

No final expense-by-expense merits result or remand quantum is inferred from either party's submissions or from the fact that the Revenue appeals were allowed.

Neutral citation and both civil appeal numbers appear on the official signed judgment's cover. No SCR citation is inferred from the archival asset identifier.

AY 1997-98 concerns American Express Bank in CA 8291/2015 (paragraph 3); AY 2003-04 concerns Oman International Bank in CA 4451/2016 (paragraph 11). Other assessment years mentioned in the judgment concern earlier litigation and are not the assessment years decided in these appeals.

Common judgment also disposes of Civil Appeal No. 4451 of 2016 concerning M/s Oman International Bank.

STATUTORY SCOPE

Income-tax Act, 1961 provisions reproduced and applied in this judgment for AYs 1997-98 and 2003-04; statutory text checked against the judgment, not a comprehensive current-law consolidation.. No current legislative, delegated-rule or treaty-amendment audit, and no Income-tax Act, 2025 mapping, is represented. Determine the governing year and statutory/treaty version before applying the decision.

LATER TREATMENT

Source checked 2026-10-04. Subsequent review proceedings, stays, later judicial treatment and the outcome of the ITAT remand have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 56](#)

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