

M/s. Carborandum Co. v. C.I.T., Madras

Civil Appeal No. 89 of 1975 — Foreign assessee company's certificate appeal from the Madras High Court reference decision.

[1977] 3 SCR 475 | 1977-04-11

The technical service fees neither accrued nor were deemed to accrue in India under the 1922 Act on the Tribunal's findings that the American company rendered its services abroad. Relief nevertheless extended only to fees exceeding the unappealed 5 per cent assessment (SCR 481-484).

Indian Income-tax Act, 1922 | 1922 Act: 4(1)(c) | 1922 Act: 33B | 1922 Act: 42(1) | 1922 Act: 42(3) | 1922 Act: 66(1)

3-judge bench | P.N. Bhagwati, J. | N.L. Untwalia, J. | S. Murtaza Fazal Ali, J.

01 FACTS OF THE CASE

Under a June 1955 agreement, the American company supplied technical information, advice, personnel and training to an Indian manufacturer for a fee of 3 per cent of net sales. It received Rs.95,762 for assessment year 1957-58. The Income-tax Officer taxed 5 per cent of the fee; the Commissioner revised that to 75 per cent under section 33B. The Tribunal restored the original assessment, finding overseas performance and Indian-company employment and control of the technicians. The High Court sustained taxation by accepting a business-connection argument under section 42 at the reference stage (SCR 477-480).

Source: [SCR 475-484](#); [physical PDF pages 1-10](#)

02 DISCUSSION BY THE HON'BLE COURT

Untwalia J., for three judges, distinguished actual accrual under section 4(1)(c) from deemed accrual under section 42. The new business-connection question had neither been raised before nor considered by the Tribunal and did not arise on its findings; a broadly worded reference did not permit it. On the merits, sections 42(1) and 42(3) required operations in India connected with the income. Where only some operations occurred there, only attributable profits could be deemed to accrue. The foreign company made technicians available abroad; the Indian company employed, paid and controlled them. Their work could not simply be attributed to the foreign company. Indian use of overseas advice did not establish Indian performance (SCR 481-483).

Source: [SCR 475-484](#); [physical PDF pages 1-10](#)

03 JUDICIAL DECISION

Even assuming a business connection, no operations producing the fees were shown to have been carried on in India by the American company. Neither actual nor deemed accrual was established on the binding facts. The Court therefore rejected the High Court's substantive as well as procedural approach (SCR 483-484).

Source: [SCR 475-484](#); [physical PDF pages 1-10](#)

04 OUTCOME / IN WHOSE FAVOUR

Assessee, subject to the surviving unappealed 5 per cent addition The appeal was allowed and the High Court judgment set aside. The reference was answered for the assessee as to fees exceeding 5 per cent. The original 5 per cent addition remained because the assessee had not appealed it. The Commissioner had to pay appeal and reference costs (SCR 484). Historical income-tax questions decided within the issue limits stated in this note No current-law or comprehensive later-treatment certification.

Source: [SCR 475-484; physical PDF pages 1-10](#)

05 AKHB REVIEW POINT

Read the holding under the historical 1922 Act and its specific overseas-performance findings. The source's comparison with then-section 9(1) does not certify today's royalty or technical-fee rules. Later treatment and 1961/2025 mapping remain unverified.

Source: [SCR 475-484; physical PDF pages 1-10](#)

ASSESSMENT YEARS AND LIMITS

Years: 1957-58

Qualification: Only years material to the issues described are listed; different claims may cover different years as stated in the facts.

REPORTED CITATION

Supplied SCR report citation; no machine-generated neutral citation substituted.

STATUTORY CONTEXT

Income-tax Act, 1961, section 9(1), discussed comparatively through Tata Chemicals

SOURCE & VERIFICATIONOriginal reported Supreme Court judgment

Unchanged supplied SCR report; catalog identifies a CC-BY-4.0 public eSCR mirror. Not represented as a separately fetched official signed PDF. Headnote SCR 475-477; jurisdiction/counsel and sole Untwalia J. judgment start SCR 477; disposition SCR 484. No adjacent judgment included.

Open cited source rendition

The source spells the party Carborandum; that printed title is retained.

The headnote's opening line prints section 4(1)(e); the judicial statutory quotation and reasoning use section 4(1)(c).

The unappealed 5 per cent assessment remains operative despite the broader merits reasoning.

STATUTORY SCOPE

Indian Income-tax Act, 1922. The historical operative enactment is identified. Other enactment references are source context only unless expressly identified as operative; no 2025 mapping is asserted.

LATER TREATMENT

Source checked 2026-10-09. Subsequent appeals, review proceedings, stays, reversals and later treatment have not been comprehensively checked. This is not a citator status certificate.

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