



Supreme Court Clarifies Temporary Lull vs. Cessation of Business

In a significant ruling impacting multinational enterprises and non-resident taxpayers, the Hon'ble Supreme Court of India in the case of *Pride Foramer S.A. v. Commissioner of Income Tax & Anr. (2025 INSC 1247)*, delivered on 17 October 2025, clarified the legal distinction between a temporary lull in operations and cessation of business.

The ruling provides crucial clarity on whether a non-resident entity, not having a Permanent Establishment ('PE') can legitimately claim business expenditure and carry-forward depreciation during periods when no active projects or contracts exist in India. The Supreme Court has aligned Indian tax jurisprudence with contemporary commercial practices, offering relief and certainty to global businesses operating in India by affirming that preparatory activities such as correspondence, bid submissions, and maintaining administrative structures constitute the carrying on of business of such non-resident entity in India.

Facts in Brief

- Pride Foramer S.A. ('Assessee' or 'Company'), a non-resident entity incorporated and headquartered in France.
- The Company had successfully executed a 10-year offshore drilling contract with ONGC. Post completion

of the contract, the Company continued to engage with ONGC from its overseas offices, submitting bids for new projects, though no fresh contract materialized during the interim period.

- During this phase, the Company incurred administrative and professional expenses (including depreciation), while its only income comprised interest on tax refunds.
- The tax authorities disallowed the expense claims, contending that the Company was not engaged in any business activity in India during the relevant period.
- The Tax Officer initiated the case, which then moved to the Commissioner of Appeals, the
- High Court, and finally the Supreme Court for final determination.

Case Journey

Tax Officer & CIT(A):

- Not in favour: Tax Officer disallowed certain business expenses and the carry forward of depreciation, stating that the assessee preparatory and administrative activities did not constitute carrying on of business.

Tribunal:

- In favour: The Tribunal held that the gap after the ONGC contract was temporary lull and not cessation of business as the Company was still carrying on business through correspondence, tenders, and contract pursuits despite no physical presence in India. This proves that the assessee did not intend to discontinue its business operation in India.

High Court:

- Not in favour: While agreeing that a mere lull in business does not imply cessation, the High Court reversed the Tribunal's finding on the grounds that the Company had no active contract with ONGC and did not maintain a permanent establishment or office in India during the interim years.

Decision of the Apex Court:

- While delivering the ruling, the Apex Court examined whether the absence of an active contract or physical presence in India could, by itself, amount to a cessation of business by a non-resident Assessee.
- SC rejected the Revenue's narrow interpretation, holding that contemporary commercial operations cannot be confined to territorial presence, ongoing contracts, or immediate revenue-generating activity. It emphasised that the decisive test is the continuity of commercial intent, evidenced through sustained participation in tenders, submission of bids, and active correspondence with prospective clients such as ONGC.
- The Apex Court further observed that a temporary lull or interregnum between contracts is an inherent feature of many industries, particularly in offshore drilling and specialised service sectors. Such intervals do not extinguish the character of a business when the assessee continues to pursue opportunities and engage in preparatory or ancillary activities connected to its core operations. The notion of 'carrying on business', therefore, must be interpreted in a practical, commercially realistic manner, consistent with evolving global business practices.
- Rejecting the High Court's contract-centric approach, the Apex Court held that the absence of a Permanent Establishment or a live project does not imply discontinuation of business for the purposes of Sections 32 and 37 of the Income-tax Act, 1961 ('Act'). It reiterated that business existence cannot be denied solely because income in the relevant year arose only from interest on tax refunds. As long as the Company demonstrates continuing engagement with its commercial sphere, the business must be regarded as operational.
- Accordingly, the Court affirmed that the Assessee remained engaged in business during the relevant

years and was entitled to claim administrative and professional expenditure and to carry forward unabsorbed depreciation. The Tribunal's conclusions were upheld, and the Revenue's restrictive interpretation was set aside as incompatible with modern jurisprudence and economic reality.

Key Takeaways

- A temporary lull or gap between contracts does not constitute cessation of business.
- The expression 'carrying on business' was interpreted broadly to include remote engagements, tender participation, bid submissions, and strategic correspondence, even when undertaken from overseas offices or cross-border engagements and without any physical or contractual presence in India.
- The judgment reinforces a pro-business, globally aligned interpretative approach, promoting certainty for multinational enterprises operating in India and ensuring that temporary operational pauses do not attract adverse tax consequences.
- SC ruling has stimulated discussion that a non-resident can be said to carry on business in India even without a PE. The Court, reversing the High Court's decision, emphasizing that in an era of global commerce, business interactions can cross borders digitally or through correspondence without a local footprint. The Apex Court rightly distinguished 'business connection' under Section 9 of the Act from PE concept under DTAAs. 'No PE' doesn't mean 'no business' or 'no tax exposure' under Indian Income tax law.
- This principle even allows a domestic company to claim business expenditure under Section 37 of the Income Tax Act, 1961, and the carry forward of unabsorbed depreciation under Section 32(2) during a lean period where it has no income or turnover, provided there is a demonstrable intention and efforts to continue the business.
- The ruling highlights the growing importance of treaty protection. Without it, even a minimal engagement, a few emails, a pitch, can turn a foreign enterprise into a client of the Indian tax authorities. Maybe it's time to rethink the threshold of what truly constitutes 'doing business'.

Authorised by

AMEET BAID
ASA

CHANDANDEEP KAUR
ASA

MOHIT JAIN
ASA