

# **SUMMARY OF MUMBAI HIGH COURT JUDGMENTS FOR JUNE, 2017**

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## **1. Rajiv Yashwant Bhale vs. The Pr Commissioner Of Income Tax**

**2017-TIOL-1109-HC-MUM-IT**  
**Writ Petition No. 3366 Of 2017**  
**Civil Application No. 849 Of 2017**  
**Dated: June 5, 2017**

### **Issue 1:**

Whether the order to make payment in 8 quarterly installments is said to be conclusive on the date of expiry of order or when assessee has paid the quarterly installments?

### **Decision:**

Settlement Commission order to be read as a whole – thus, though order expired on October 23,2013, it can be termed as conclusive only after assessee has paid 8 quarterly installments – assessee paid only first installment – assessee in default as future installments not paid – penalty u/s 221 (failure to comply with payment of installments) – main order not attained finality.

### **Issue 2:**

Whether attachment of residential bungalow under Rule 68B of the second schedule of the IT Act to recover taxes justified?

### **Decision:**

Settlement Commission order itself not conclusive within the meaning under Rule 68B – therefore, attachment of residential bungalow for recovery of taxes cannot be said to be perverse or vitiated by any error apparent on face of the record.

## **2. Commissioner Of Income Tax vs. Dharma Productions Pvt Ltd**

**2017-TIOL-1074-HC-MUM-IT**  
**Income Tax Appeal No. 1140 of 2014**  
**Income Tax Appeal No. 1144 of 2014**  
**Dated: June 5, 2017**

### **Issue 1:**

Whether deletion of expenditure which does not form a part of the cost in terms of Rule 9A, would give rise to a substantial question of law?

**Decision:**

Expenditure incurred was not part cost of production of the film under provisions of the Rule 9A – requires consideration – therefore, whether deletion of the expenditure is justified even though the expenditure did not form a part of the cost of production gives rise to a substantial question of law – appeal deserves to be admitted.

**Issue 2:**

Whether expenditure can be allowed u/s 37(1) against services rendered as under contractual liability?

**Decision:**

Existence of agreement between parties not disputed – no separate payment was alleged to have been made to Mr.Shah Rukh Khan for services rendered under the agreement - services rendered by Mr.Shah Rukh Khan was on behalf of RCEPL under the contractual obligation – therefore, expenditure can be allowed u/s 37(1) as assessee has established that payment has been made as per the agreement between parties.

**3. Commissioner Of Income Tax vs. Alfa Beta Engineering Construction Company Pvt Ltd**

[2017-TIOL-1152-HC-MUM-IT](#)

Income Tax Appeal No. 1237 of 2014

Dated: June 7, 2017

**Issue:**

Whether remittances in cash by head office to it's branch office at different State, for purposes of work carried out at various sites, warrants addition?

**Decision:**

Cash payments made were not payments made to third parties on account of sub-contract – cash payments merely represented remittance to it's branch office at Chennai for work carried out at various sites – does not warrant addition.

**4. Commissioner Of Income Tax vs. Indu Oil & Soap Co**

[2017-TIOL-1143-HC-MUM-IT](#)

Income Tax Appeal No. 1861 of 2014

Dated: June 8, 2017

**Issue:**

Whether assessee can be denied deduction u/s 80IB(10), when the conditions laid down u/s 80IB(10) of the I-T Act have been complied with?

**Decision:**

Project completed within stipulated time - conditions laid down u/s 80IB(10) of the Act have been complied with – deduction u/s 80IB(10) allowed – no substantial question of law.

**5. Commissioner Of Income Tax vs. Sicom Ltd**

**2017-TIOL-1144-HC-MUM-IT**  
**Income Tax Appeal No. 25 of 2015**  
**Dated: June 8, 2017**

**Issue:**

Whether the valuation made at cost or market value, in the income tax return, whichever was lower, is a valid method of accounting?

**Decision:**

AO accepted that assessee is following lower of cost or market value – evident that whole investment has turned bad and cannot have market value – hence, assessee taken market value as nil in books of accounts - based on principle laid down in ***United Commercial Bank vs. Commissioner Of Income Tax***<sup>1</sup> - the valuation made at cost or market value, in the income tax return, whichever was lower, is a valid method of accounting – same is to be accepted by the IT Department.

**6. Commissioner Of Income Tax vs. Golden Tobacco Ltd**

**2017-TIOL-1151-HC-MUM-IT**  
**Income tax Appeal No. 1147 of 2014**  
**Dated: June 9, 2017**

**Issue:**

Whether a case decided on the basis of a concession and not merits be considered a precedent?

**Decision:**

In precedent cases, courts have confirmed disallowance of proportionate interest u/s 14A to the extent of 2% on exempt income – present case – to end dispute - both parties agreed for disallowance of expenditure to the extent of 10% of the total exempt income – case decided on the basis of concession and not on merits – therefore, case cannot be considered a precedent.

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<sup>1</sup> (1999) 240 ITR 355

## **7. Commissioner Of Income Tax vs. K Pankajkumar And Co**

**2017-TIOL-1158-HC-MUM-IT**  
**Income Tax Appeal No. 163 of 2015**  
**Dated: June 9, 2017**

### **Issue:**

Whether loss on actual cancellation of forward contract during the year in question, is a notional loss?

### **Decision:**

Based on principle laid down in ***Commissioner Of Income Tax vs. M/s D Chetan & Co***<sup>2</sup>- Forward contracts in foreign exchange when incidental to business – regular business transaction – purpose is to cover up future losses on account of foreign exchange valuation – not speculative in nature - safeguard against the loss on account of foreign exchange variation – losses incurred as forward contract to be allowed as business loss.

## **8. Ellora Paper Mills Ltd vs. Commissioner Of Income Tax**

**2017-TIOL-1165-HC-MUM-IT**  
**Income Tax Appeal No.3 of 2002**  
**Dated: June 9, 2017**

### **Issue:**

Whether cash payment in excess of Rs.10,000 can be exempted under the second proviso of section 40(A)(3) and rule 6DD even if assessee fails to prove genuineness of expenditure?

### **Decision:**

Benefit of Rule 6DD(h) is available only when cash payment made in excess of prescribed limit is made to persons ordinarily resident in village with no banking facilities – Rule 6DD indicates assessee has to furnish evidence for proving genuineness for payment made- assessee unable to satisfy authority with respect to genuineness of payments made – therefore, payment not excluded from application section 40(A) (3) as condition under 6DD(h) were not satisfied.

## **9. B A Mohota Textiles Traders Pvt Ltd vs. The Deputy Commissioner Of Income Tax**

**2017-TIOL-1167-HC-MUM-IT**  
**Income Tax Appeal No.73 of 2002**  
**Dated: June 12, 2017**

**Issue:**

Whether transfer of shares by one company to another company in pursuance of a family agreement between the promoters, would attract capital gains?

**Decision:**

No dispute that family settlement will not amount to transfer. But, family settlement is restricted to only persons part of the family and who have entered in to the agreement – though Company (herein after referred to as assessee), was under the control and management of the members of the family, the assessee was incorporated under the Companies Act and is a separate legal entity – distinct from its shareholders – therefore, assessee not a member of the family and so cannot be part of family settlement.

Transfer of shares by the company is covered within the meaning of “transfer” u/s 2(47) – therefore, the transaction of transfer of shares by the assessee being an independent entity is liable to capital gains tax.

**10. Commissioner Of Income Tax vs. Classic Electricals Ltd****2017-TIOL-1163-HC-MUM-IT****Income Tax Appeal No.1268 of 2014****Dated: June 14, 2017****Issue:**

Whether comparable sale instances of commercial property can be a deciding factor for determining valuation of residential flat?

**Decision:**

Comparable sale instances produced are of commercial property whereas; property in question is a residential flat – Tribunal justified in deleting additions made by AO u/s 69(B) without considering comparable prevailing rates of properties.

**11. Commissioner Of Income Tax vs. Hercules Hoists Ltd****2017-TIOL-1162-HC-MUM-IT****Income Tax Appeal No. 707 of 2014****Dated: June 14, 2017****Issue:**

Whether from profits earned during the current A.Y would be entitled for deduction u/s 80IA(5), without deducting the losses that were absorbed in earlier years losses set?

**Decision:**

Losses beginning from initial assessment year alone can be brought forward – not losses of earlier years which are already set – off against income – based on principle laid down in ***Velayudhaswamy Spinning Mills (P) Ltd & Sudan Spinning Mills (P) Ltd***<sup>3</sup> and confirmed by Supreme Court – deduction of profit u/s 80IA(5), without deducting the losses of earlier years was allowed.

**12. Commissioner Of Income Tax vs. IMS Health India Pvt Ltd**

**2017-TIOL-1161-HC-MUM-IT**  
**Income Tax Appeal No. 667 of 2014**  
**Dated: June 14, 2017**

**Issue:**

Whether penalty can be levied u/s 271(1)(C) when assessee fails to offer explanation w.r.t certain disallowances made by the AO, but the claims made by the assessee were bonafide?

**Decision:**

Loss of information Service Division subsequently allowed by AO – balance claims bonafide – merely because assessee has claimed certain expenditures which are not accepted by the revenue, that by itself will not attract penalty u/s 271(1)(C) – relied on judgment of ***Commissioner Of Income Tax vs. Reliance Petro Products***<sup>4</sup>.

**13. Commissioner Of Income Tax vs. Music Broadcast Pvt Ltd**

**2017-TIOL-1237-HC-MUM-IT**  
**Income Tax Appeal No. 1824 of 2014**  
**Dated: June 15, 2017**

**Issue:**

Whether amortization of expenditure u/s 35D is allowable?

**Decision:**

Based on principle laid down by the Hon'ble Supreme Court in ***Navi Mumbai vs. Amar Bitumen & Allied Products Pvt. Ltd***<sup>5</sup> - principle of consistency must be followed – if in previous year, same amount was

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3 (2012) 340 ITR 447

4 (2010) 11 SCC 762

5 2006 (202) E.L.T 213 (S.C)

allowed as deduction u/s 35D by the revenue, order of previous year becomes final – same amount to be allowed as deduction under the said section in the current year also.

#### **14. Dvb Warehousing Company vs. Commissioner Of Income Tax**

**2017-TIOL-1229-HC-MUM-IT**  
**Income Tax Reference No.9 of 2001**  
**Dated: June 22, 2017**

**Issue:**

Whether rent charged by BPT should be according to the 'compromise proposal' arrived at by the Supreme Court in **Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai & Anr<sup>6</sup>**?

Reference to Mumbai High Court – rates of rent as per 'compromise proposal' – to remain unchanged for a period up to 31-03-1994. AO assessed returns for the year 1989 – 90 to 1996 – 97 based on compromise formula – same applicable for the assessment year 1988 – 89 – AO to use compromise formula as arrived by the Supreme Court in **Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai & Anr.**

#### **15. Bajaj Tempo Ltd vs. Commissioner Of Income Tax**

**2017-TIOL-1231-HC-MUM-IT**  
**Income Tax Reference No.128 of 2000**  
**Dated: June 22, 2017**

**Issue:**

Whether the guarantee commission paid to bankers for providing guarantee for timely repayment of loan taken from financial institutions for machinery and equipment could be considered revenue expenditure?

**Decision:**

Relying on the judgment of the Supreme Court in **C.I.T vs. India Cements Ltd<sup>7</sup>**, the Division Bench of this Court in **Kinetic Engineering Ltd vs. commissioner<sup>8</sup>** and various other High Courts – if interest paid on credit purchase of machinery is regarded as a revenue expenditure, then guarantee commission paid to the bank for obtaining easy terms for acquisition of the machinery should also be regarded as revenue expenditure – this Hon'ble Court held – guarantee commission paid to bankers for providing guarantee for timely

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<sup>6</sup> AIR 2004 SC 1815

<sup>7</sup> (1996) 60 ITR 52

<sup>8</sup> (1998) 233 ITR 762.

repayment of loan taken from financial institutions for machinery and equipment to be revenue expenditure and not a capital expenditure.

## **16. Commissioner Of Income Tax vs. Lavanya Land Pvt Ltd**

**2017-TIOL-1245-HC-MUM-IT**

**Income Tax Appeal No.72/2014  
Income Tax Appeal No. 114/2014  
Income Tax Appeal No.122/2014  
Income Tax Appeal No. 124/2014  
Income Tax Appeal No.225/2014  
Income Tax Appeal No. 226/2014  
Income Tax Appeal No. 423/2014  
Income Tax Appeal No. 425/2014  
Income Tax Appeal No. 426/2014**

**Dated: June 23, 2017**

### **Issue:**

Whether the HC can interfere with Tribunal's findings that sec 153 was not attracted in the case of the assessee and its invocation was bad in law?

### **Decision:**

No material evidence or conclusive proof to show transfer of money (cash) – ingredients of section 153 not satisfied – therefore, its invocation in the present case is bad in law – Tribunal's findings were based on detailed analysis of facts and not mere interpretation of the section – no substantial question of law arising from Tribunal's order – therefore, High Court has no jurisdiction to intervene with the findings of the Tribunal.

## **17. Commissioner Of Income Tax vs. Petron Investments Pvt Ltd**

**2017-TIOL-1238-HC-MUM-IT  
Income Tax Appeal No. 1795 of 2014  
Dated: June 29, 2017**

### **Issue:**

Whether levy of penalty under section 271(1)(C) is justified when the basis for addition of income and the basis for levy of penalty are different?

### **Decision:**

High Court upheld the Tribunal's decision – penalty proceeding was initiated on an entirely different ground – amount shown towards professional fee (legal expenses) not disputed – no concealment of



material facts of income by assessee – therefore, penalty proceedings initiated u/s 271(1)(c) not justified – no substantial question of law – appeal dismissed.