

SUMMARY OF SUPREME COURT JUDGMENTS FOR AUGUST, 2017

By

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1. COMMISSIONER OF INCOME TAX-1, MUMBAI vs. M/s HINDUSTAN PETROLEUM CORPORATION LTD

Civil Appeal No. 9295 of 2017
Civil Appeal No. 9296 of 2017
Civil Appeal No. 9297 of 2017
Civil Appeal No. 9298 of 2017
Civil Appeal No. 9299 of 2017
Civil Appeal No. 9300 of 2017
Civil Appeal No. 9301 of 2017
Civil Appeal No. 9302 of 2017
Civil Appeal No. 9303 of 2017
Civil Appeal No. 9304 of 2017
Civil Appeal No. 9305 of 2017
Civil Appeal No. 9306 of 2017
Civil Appeal No. 9307 of 2017
Civil Appeal No. 9308 of 2017
Civil Appeal No. 9309 of 2017

Dated: August 3, 2017

Issue:

Whether bottling LPG Gas amounts to production or manufacturing activity for the purpose of deduction u/s 80HHC, 80I and 80IA?

Decision:

Agreeing with the view of the learned counsel for the assessee that the definition of 'manufacture of gas' in Rule 2 (xxxii) of the Gas Cylinders Rules, 2004 treats distribution and bottling of gas as manufacturing or producing gas and relying on the fact that in cases like **Puttur Petro Products Pvt. Ltd. v. The Assistant Commissioner of Income Tax, Mangalore**¹ and **Central U.P. Gas Ltd. v. Deputy Commissioner of Income Tax, Kanpur**² the Department never challenged the decision of the High Court's which held that bottling of

¹ (2014) 361 ITR 290

² Income Tax Appeal No. 224 of 2014

gas into cylinder would amount to production for the purpose of deduction under Sections 80HH, 80-I and 80-IA, in the present case, the Hon'ble Supreme Court concurred with the view taken by the ITAT that bottling of LPG gas in to cylinder amounts to production for the purpose of deduction under the aforesaid provisions of the Act and dismissed the appeal.

2. DAYAWANTI THROUGH SMT SUNITA GUPTA (LR) vs. COMMISSIONER OF INCOME TAX

Diary No.3073/2017

Dated: August 8, 2017

Issue 1:

Whether addition made on basis of incriminating material found during search, is justified even when the assessee had surrendered additional income at the time of search and had also made her statement under oath?

Issue2:

Whether an order for rejecting the books of account and estimating turnover by applying a high GP rate, is justifiable, where the inferences drawn with respect to undeclared income were premised on the materials found during search as well as the statements recorded by the assessee?

Decision:

With regard to issue No. 1, the High Court had held that statements made under oath could be used as a basis for making additions when materials and documents are recovered during the search proceedings

In view of issue No. 2, the High Court upheld the decision of the ITAT which upheld the rejection of books of accounts on the ground that there was no material evidence to substantiate the correctness and completeness of such books. The High Court further held that the estimations made by the AO with respect to unaccounted transactions and undeclared income was fair and reasonable on the ground that the assessee could not prove that the estimations made by the AO was arbitrary or unreasonable and that section 153A does not provide for assessment to be made strictly on the basis of evidence found as a result of search or other documents.

The Hon'ble Supreme Court condoned the delay and granted leave to the assessee to defend her case on the issue of surrendered additional income and estimation of turnover.

3. COMMISSIONER OF INCOME TAX, MANGALURU & ANR vs. THE NAGARBAIL SALT OWNERS COOPERATIVE SOCIETY LT

Special Leave to Appeal (C) ...Diary No(s). 20614/2017

Dated: August 8, 2017

Issue:

Whether amount transferred to 'Distribution Pool Fund Account' can be taxed in the hands of Society, if the principal object of Society is to 'manufacture salt on co-operative basis' and its cumulative income is not more than the commission earned on manufacture & sale of sale, interest on loans advanced to members and deposits with the Bank?

Decision:

After a thorough reading of the Preamble, Bye- laws and objects of the Society, the High Court came to the conclusion that the cumulative income of the Society cannot be anything more than commission earned on manufacture and sale of salt, interest on loans advanced to members and deposits with the Bank and collection of rents and service charges. The High Court, therefore, held that since the principal object of Society was to 'manufacture salt on co-operative basis' and the cumulative income was nothing beyond the scope of Chapter XVI of the Bye - laws the amount transferred to the 'Distribution Pool Fund Account' cannot be brought within the purview of Chapter XVI and hence not taxable in the hands of the Society.

4. PR COMMISSIONER OF INCOME TAX PATIALA vs. STATE BANK OF PATIALA

Diary No.20331/2017

Dated: August 8, 2017

Issue 1:

Whether section 14A is applicable only to income arising from the investment portfolio and not from stock-in-trade?

Issue 2:

Whether object of trading in securities does not constitute the activity of investment where the object is to earn dividend or interest?

Issue 3:

Whether a financial decision of an assessee that trades in securities, may factor in the dividend or interest that the securities it acquires as its stock-in-trade yields or is likely to yield?

Decision:

With respect to issue No.1, based on the principle laid down in **CCI Ltd. vs. Joint Commissioner of Income-tax, Udipi Range**³, and on the CBDT Circular as relied on by the ITAT⁴, the High Court held that if intent behind purchase and sale of securities is to earn profit, the same would be treated as trading profit and if the intent is to derive income by way of dividend then the profit would be said to have accrued from the investment and in such cases the assessee will have two portfolios, namely, investment portfolio and a trading portfolio and section 14A will be applicable only to income arising from the investment portfolio and not from the trading portfolio i.e. stock-in-trade.

In light of issue No.2, the High Court held that assessee was engaged in the purchase and sale of securities as a trader with the object of earning profit and not with object of earning exempt income, such as, dividend and interest and therefore object of earning profit from trading in securities will not constitute the activity of investment where the object is to earn dividend or interest.

With respect to issue No. 3, the High Court held that a financial decision of an assessee that trades in securities can factor in the dividend or interest that the securities it acquires as its stock-in-trade yields or is likely to yield as such aspects are taken in to consideration merely with the view of assessing the price at which the security ought to be acquired, retained and sold not with a view to earning the dividend or interest there from.

However, the Hon'ble Supreme Court having heard the parties, condoned the delay and admitted the SLP, preferred by the Revenue, challenging the decision of the High Court.

5. THE COMMISSIONER OF INCOME TAX-2 vs DENA BANK

Diary No.20682/2017

Dated: August 8, 2017

³ [2012] 250 CTR 291

⁴ Circular No.18, dated 02.11.2015

Issue:

Whether it can be prima facie straightway accepted, that section 115JB will be applicable to the nationalized banks?

Decision:

The High Court, after having examined sub-section (2)(b) of section 115JB of the Income Tax Act, 1961 and sub-section (2) of section 211 of the Companies Act, 1956 held that section 115JB being applicable to nationalized banks cannot be prima facie straightway accepted and that the Commissioner should record a satisfaction that such provisions of the Income Tax Act would be attracted even to the nationalized banks and further dismissed the appeal on the ground that no substantial question of law arose. However, the Hon'ble Supreme Court condoned the delay and admitted the appeal preferred by the Department.

6. THE CITIZEN CO-OPERATIVE SOCIETY LTD THROUGH ITS MANAGING DIRECTOR, HYDERABAD vs. ASST COMMISSIONER OF INCOME TAX CIRCLE -9 (1), HYDERABAD

**Civil Appeal No. 10245 of 2017
(Arising out of SLP (C) No. 20044 of 2015)**

Dated: August 8, 2017

Issue:

Whether a co-operative society functioning as a cooperative bank, not only for its members but also for the public at large be eligible to claim deduction u/s 80P?

Decision:

The Hon'ble Supreme held that firstly, sub-section (4) of section 80P which was introduced by the Finance Act, 2006, specifically excludes co-operative banks from the ambit of Section 80P and therefore deduction under the 80P could not be claimed by the assessee. Secondly, assessee did not fall in the definition of 'co-operative bank' as it did not possess a license from the Reserve Bank of India and therefore would not come within the mischief of sub-section (4) of Section 80P and lastly, the assessee was in violation of the provisions of the Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which it was formed as it not only catered to its members but also catered to the public at large and therefore the assessee being a co-operative society functioning as a cooperative bank, not only for its

members but also for the public at large will not be eligible to claim deduction u/s 80P.

7. K RAVEENDRANATHAN NAIR vs. COMMISSIONER OF INCOME TAX & ANR

Civil Appeal No. 3131 of 2006
Civil Appeal No. 3130 of 2006

Dated: August 10, 2017

Issue 1:

Whether right of appeal is a substantive right?

Issue 2:

Whether where an appeal is preferred by the assessee before the HC u/s 260A against orders passed for assessment years prior to March 06, 2003, Section 52A of Kerala Court Fees Act 1959 will be applicable?

Decision:

With respect to issue No.1, the Hon'ble Supreme Court held that the right to appeal is a substantive right as introduction of section 260A of the Income Tax Act with effect from October 01, 1998, gave the right to appeal a statutory recognition and therefore, for assessment orders passed after October 01, 1998, vested right of appeal in the High Court had accrued.

In light of the second issue, the Hon'ble Supreme Court held that the amendment in question in the 1959 Act, i.e. Section 52A, was effective only from March 06, 2003 and could not be applied retrospectively and therefore if the date of assessment is prior to March 06, 2003, and the assessee has preferred an appeal in the High Court under section 260A of the Income Tax Act, Section 52A of the 1959 Act shall not be applicable and the court fee payable will be the one which was payable on the date of the assessment order.

8. COMMISSIONER OF INCOME TAX CENTRAL-1, AHMEDABAD vs. NIRMA LTD

Diary No(s). 20926/2017

Dated: August 14, 2017

Issue:

Whether the High Court is right in law and on facts in holding that the amount of Sales-tax incentive received by the assessee is a capital receipt on the basis that it does not give any benefit on day-to-day functioning of the business or make the industry more profitable?

Decision:

Based on the decisions in *Commissioner of Income Tax v. Birla VXL Ltd*⁵ and *Deputy Commissioner of Income-tax v. Munjal Auto Industries Ltd*⁶ wherein the of this Court was held that if the incentive given would not give any benefit on a day-to-day functioning of the business, or for making the industry more profitable, i.e., the incentive would not affect the day-to-day running, it is not an operational "revenue" item and further pointed out that the incentive scheme was meant for capital outlay expended by the assessee for setting up the unit in case of a new industrial unit or for expansion and diversification of an existing unit and hence the incentive was is not in revenue field and should be in capital field, the Hon'ble Supreme Court, answered the issue in the present appeals in favour of the assessee and against the department.

9. REKHA KRISHNARAJ vs. INCOME TAX OFFICER WARD 1 HOSPET**Diary No(s). 20783/2017****Dated: August 14, 2017****Issue:**

Whether provisions of Section 68 regarding unexplained credit apply only to cash credit?

Decision:

The High Court had held that provisions of Section 68 regarding unexplained credit did not apply merely to cash credits. As far as there was a credit shown in the account, whether it be cash credit or t be credit representing the value of the supplies made by the suppliers on credit, provisions of Section 68 would apply. However, the Hon'ble Supreme Court dismissed the SLP on grounds of delay.

10. COMMISSIONER OF INCOME TAX, COCHIN vs. M/s TRAVANCORE COCHIN UDYOGA MANDAL

⁵ Tax Appeal No. 316 of 2012 with Tax Appeal No. 317 of 2012 to Tax Appeal No. 318 of 2012

⁶ Tax Appeal Nos. 450, 451 and 453 of 2012

Civil Appeal No. 2015 of 2007

Dated: August 17, 2017

Issue:

Whether when the lower courts have failed to address the issue of fixation of rent by the State Govt being statutory or contractual and its effect on deduction claimed under the Income Tax Act, it becomes a mixed question of law and fact and is fit to be remanded back to the lower authority?

Decision:

The Hon'ble Supreme Court held that the first question as to the fixation of rent and its payment being statutory or contractual and the second question of effect while claiming deduction under the provisions of Income Tax Act and the question of the assessment year in which the deduction could be claimed was a mixed question of law and facts. The Hon'ble Court further held that since the Revenue had not raised the aforesaid issues before any of the lower authorities and raised it for the first time before this Hon'ble Court, the Court will not decide the same on appeal and therefore the matter was fit to be remanded the matter back to the Tribunal.

11.COMMISSIONER OF INCOME TAX Vs ANSAL LANDMARK TOWNSHIPS (P) LTD

Diary No(s). 24249/2017

Dated: August 25, 2017

Issue:

When the payee/resident files its return of income disclosing the payment received in which the income earned by it is embedded and has also paid tax on such income. Whether a person cannot be treated as a person in default?

Decision:

The High Court of Delhi held that the second proviso to Section 40(a)(ia) was declaratory and curative in nature and should be given retrospective effect from 1st April 2005. The High Court therein in its impugned judgment also observed that no person could be treated as in default when the payee/resident files its return of income disclosing the payment received, in which the income earned by it was embedded and had also paid tax on such income. The Hon'ble Supreme Court condoned the delay and granted leave on the retrospective application of Section 40(a)(ia).

12. COMMISSIONER OF INCOME TAX Vs. SINGHAD TECHNICAL

EDUCATION SOCIETY:

**Civil Appeal No. 11080 of 2017
(Arising Out of SLP (C) No. 25257 of 2015)**

**Civil Appeal No. 11081 of 2017
(Arising out of SLP (C) No. 25258 of 2015)**

**Civil Appeal No. 11082 of 2017
(Arising out of SLP (C) NO. 27323 of 2015)**

**Civil Appeal No. 11083 of 2017
(Arising out of SLP (C) No. 30278 of 2015)**

Dated: August 29, 2017

Issue:

Whether as per provisions of section 153C, the incriminating materials which were seized must be related to A.Y.in question and since it is mandatory for assessment, it becomes a jurisdictional fact and the Tribunal rightly permitted this additional ground.

Decision:

The Supreme Court was not informed and, therefore, unaware of any challenge to the assessment order in respect of other four Assessment Years and outcome thereof. Wherever any such proceedings are pending, same would be considered without being affected by the outcome of these proceedings. the jurisdictional conditions precedent to the issue of a notice under Section 153C is that 'money, bullion, jewellery or other valuable article or thing' or any 'books of accounts or documents' must be seized or requisitioned. In the present case, nothing was seized relating to any of the Assessment Years in question and hence the notice under Section 153C and the assessment under Section 153A, read with Section 153C, pursuant thereto are invalid.

Hence the appeal was dismissed.

**13. PR COMMISSIONER OF INCOME TAX, CENTRAL 1 Vs. M/S
SANTHA BUILDING INDIA PVT LTD**

**Special Leave to Appeal (C) No(s).
Diary No(s). 24231/2017**

Dated: August 28, 2017

Issue:

Can the Revenue doubt all of a sudden in a particular assessment Year where the assessee has followed a recognised method of Accounting in which the assessee has not led to any escapement of Income?

Decision:

The High Court of Madras has held that a recognised method of Accounting consistently followed by the assessee, which has not led to escapement of income, cannot be doubted all of a sudden in a particular assessment year.

The Hon'ble Supreme Court condones the delay to respective parties directing their appearance on the issue of validity of recognised method of accounting.

14. PR COMMISSIONER OF INCOME TAX VADODRA-3 Vs. PRAMUKH TRANSPORT COMPANY

Diary No(s). 24211/2017

Dated: August 28, 2017

Issue:

Whether the amendment made in section 40 (a)(ia) of Income Tax Act, 1961 by Finance Act 2010 is retrospective in operation?

Decision:

The High Court of Gujarat held that in the case of Commissioner of Income Tax, Ahmedabad Versus Omprakash R. Chaudhary, by which the view has been taken that the amendment made in section 40 (a)(ia) of Income Tax Act, 1961 by Finance Act 2010 is retrospective in operation and having effect from 1st April 2005 i.e. from the date of insertion of Section 40 (a)(ia) of the Act. It is reported that decision of the Division Bench of this court in the case of Omprakash R. Chaudhary (supra) has been approved by the Hon'ble Supreme Court subsequently.

The Hon'ble Supreme Court condones the delay and issued notices to respective parties, directing their appearance for further hearing on the issue of retrospective application of amended Section 40(a)(ia).

15. COMMISSIONER OF INCOME TAX Vs. M/S RURAL ELECT CORP LTD:

**Special Leave to Appeal (C) No(s) 612/2014
SLP(C) No. 19165/2014 (XIV)
SLP(C) No. 1836/2014 (XIV)
Dated: August 28, 2017**

Issue:

When the reasons recorded by the Commissioner nowhere contains that the assessee has failed to disclose fully and truly all the material facts necessary for its assessment. Whether assessment can be reopened?

Decision:

The High Court of Delhi held that there is no whisper in the purported reasons of the petitioner having failed to disclose fully and truly all the material facts necessary for its assessment. Therefore, the necessary ingredients of the provisions of Section 147 are not satisfied. In view thereof, the revenue cannot also raise the ground with regard to the expenses being of a 'capital' nature, whereas the petitioner had claimed it as 'revenue expenditure'. Therefore, in whichever way we look at this case, we find that the initiation of reopening of the assessment pertaining to the assessment year 2004-05 did not have the backing of law. Consequently, the impugned notice under Section 148 and all proceedings pursuant thereto, including the assessment order passed pursuant thereto are liable to be set aside. It is ordered accordingly. The writ petition is allowed. There shall be no order as to costs.

The Hon'ble Supreme Court disposes of the pending applications and dismisses the SLP observing that there was no infirmity in the judgment of High Court.

16. COMMISSIONER OF INCOME TAX-1, BARODA Vs. GUJARAT ALKALIES & CHEMICALS LTD:

**Special Leave to Appeal (C) No(s). 33888/2015
Diary No. 15942/2017
Dated: August 28, 2017**

Issue:

Whether addition made on account of expenses incurred for replacement of membrane cells, can be disallowed, treating the same as capital expenditure, by following the rule of consistency and without considering the issues on merits when no material is referred to by the AO leading to the conclusion that membrane itself can be treated as a separate and independent machine, such expenditure could be treated as of revenue nature.

Decision:

The High Court of Gujarat it was held that when no material was referred to by AO leading to the conclusion that membrane itself could be treated as a separate and independent machine, such expenditure deserves to be treated as of revenue nature.

The Hon'ble Supreme Court dismissed the Special Leave Petition, in the light of several similar matters.

17. COMMISSIONER OF INCOME TAX Vs. MAHARASTRA INDUSTRIAL DEVELOPMENT CORPORATION:

Diary No(s). 19949/2017

Dated: August 28, 2017

Issue:

In case if there is no mistake apparent from the words or no new evidence is discovered after passing of such an order. Whether the order can be reviewed?

Decision:

The High of Bombay held that no order could be reviewed in case of no mistake apparent from records or no new evidence was discovered after passing of such order. The High Court further clarified that there could not be an administrative difficulties as a reason to file a defective appeal.

The Hon'ble Supreme Court condones the delay and dismisses the Special Leave Petition with cost of Rs.50,000 to be paid by the petitioner within a period of two weeks from today and same to be recovered by the persons.

18. PR COMMISSIONER OF INCOME TAX Vs. JINDAL

Diary No(s). 24342/2017

Dated: August 28, 2017

Issue 1:

Whether penalty is to be levied automatically whenever the assessee declares a higher income in his return filed u/s 153A in comparison to the original return filed u/s 139(1)?

Decision:

The High Court of Delhi held that the Gujarat High Court in the case of *Kirit Dahyabhai Patel v. Assistant Commissioner of Income Tax, (2015) 280 CTR (Guj) 216*, held that: "In view of specific provision of s. 153A of the I.T. Act. the return of income filed in response to notice under s. 153A of the I.T. Act is to be considered as return filed under s. 139 of the Act, as the AO has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under s. 271(1)(c) of the I.T. Act and the penalty is to be levied on the income assessed over and above the income returned under s. 153A, if any."

The High Court held that no penalty could be levied automatically whenever the assessee declares a higher income in his return filed u/s 153A in comparison to the original return filed u/s 139(1). The High Court in its impugned judgment further held that when AO had accepted the revised return filed by assessee u/s 153A, no occasion arises to refer to the previous return filed u/s 139.

The Hon'ble Supreme Court condones the delay and dismisses the Special Leave Petition, leaving the question of law open.