

SUMMARY OF SUPREME COURT JUDGMENTS FOR JULY, 2017

By

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1. ENGINEERS INDIA LTD vs. COMMISSIONER OF INCOME TAX

Civil Appeal No(S). 8725/2017

Dated: July 6, 2017

Issue:

Whether in case of difference in opinions between Co-ordinate Benches of High Court of Delhi, the matter has to be referred to the Larger Bench?

Decision:

The Hon'ble Supreme Court held that when the view of a Bench is different from the earlier view of the Co-ordinate Bench of that High Court of Delhi, the appropriate course of action would be to refer the matter to a Larger Bench of the same High Court of Delhi and remanded the matter back to the High Court for a fresh decision by a Larger Bench.

2. M/s ADVANTA INDIA LTD (NOW KNOWN AS M/s ADVANTA LTD) vs. COMMISSIONER OF INCOME TAX

SLP Appeal (C) Nos. 3489-2016

Dated: July 6, 2017

Issue:

Whether expenditure incurred for acquiring a living organism and technical know-how under a licensing agreement should be treated as a capital expenditure or revenue expenditure?

Decision:

The SLP was filed challenging the judgement of the High Court of Andhra Pradesh whereby it was held that expenditure incurred for acquiring living organism and technical know-how under a licensing agreement should be treated as capital expenditure. The

Hon'ble Supreme Court admitted the SLP and granted leave to the appellant to defend his case.

3. COMMISSIONER OF INCOME TAX BUSINESS WARD XV(3), CHENNAI vs. M/s SANGHVI AND DOSHI ENTERPRISE THR ITS DIRECTOR

**Petition(s) for Special Leave to Appeal (C) No(s).9138/2014 WITH SLP(C) No.11491/2014 (III)
(With appln.(s) for c/delay in filing SLP)**

Dated: July 10, 2017

Issue:

SLP was filed by the Revenue against the High Court of Madras judgment wherein it was held that developer was entitled for the deduction u/s 80IB(10) for the housing project with respect to residential flats with built up area not exceeding 1500 sq. ft. even though in the same housing project, the developer had constructed flats exceeding built up area of 1500 sq. ft..

Decision:

The Hon'ble Supreme Court dismissed the SLP concurring with the view of the High Court.

4. SHYAMAL SARKAR vs. COMMISSIONER OF INCOME TAX, SILIGURI

**Petition(s) for Special Leave to Appeal (C) No(s). 29582/2015
Dated: July 10, 2017**

Issue:

Whether limitation period could be extended by the time taken for special audit which is conducted in accordance with the approval of the CIT?

Decision:

The Hon'ble Supreme Court confirmed the Calcutta High Court's decision that the period of limitation would be extended by the time taken for special audit and that when fee paid by the assessee to the auditor, the defect if any are mere irregularities which shall not invalidate the proceedings which lead to the order for audit.

5. COMMISSIONER OF INCOME TAX vs. M/s PIX TRANSMISSION LTD

**Civil Appeal No(S). 9674/2010
Dated: July 13, 2017**

Issue:

Whether, if the claim of the assessee u/s 88-HHC of the Income Tax Act is justified even if the assessee has not furnished the report of an accountant along with the return of income, gives rise to a substantial question of law?

Decision:

The High Court of Bombay had dismissed the appeal holding that the above mentioned issue did not give rise to any substantial question of law. However, the Hon'ble Supreme Court held that the above question is a substantial question of law which arises for determination and remanded the matter back to the High Court.

6. DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS) vs. M/s INDIA TRADE PROMOTION ORGANIZATION

Special Leave to Appeal (C) No(s). 14674/2016 SLP(C) No.8434/2017

Dated: July 14, 2017

Issue 1:

Whether the First Proviso to Section 2(15) of the Income Tax Act as amended by the Finance Act, 2008, is arbitrary and unreasonable and has no rational nexus with the object sought to be achieved and is thus violative of Article 14 of the Constitution of India?

Issue2:

Whether is fee or some other consideration was collected or received by an institution, it would lose its character of having been established for a charitable purpose?

Decision:

Since the High Court of Delhi had upheld the constitutional validity of the First Proviso to Section 2(15), the impugned order of the High Court was set aside by the Hon'ble Supreme Court and the Apex Court condoned the delay and admitted the matter allowing the revenue to defend it's case.

7. M/s PARAMOUNT COMMUNICATIONS LTD vs. PR COMMISSIONER OF INCOME TAX-7

Special Leave to Appeal (C) No(s). 16930/2017

Dated: July 14, 2017

Issue 1:

Whether non application of mind by the higher authorities while granting permission results in an invalid reopening notice u/s 147?

Issue 2:

Whether reopening of assessment entirely based on information received from Directorate of Revenue Intelligence is valid?

Decision:

The High Court of Delhi had held that section 147 merely authorises the issuance of notice to reopen with conditions and that power to reopen concluded assessment can be exercised only when there is an escapement of income and the Revenue has information ruling that the escapement is also relatable to suppression of material facts. The Hon'ble Supreme Court, concurring with the opinion of the High Court dismissed the SLP.

8. SETTLEMENT COMMISSION ADDITIONAL BENCH & ORS vs. M/s OUTOTEC GMBH

Special Leave to Appeal (C) Diary No(s). 15427/2017 INCOME TAX

Dated: July 14, 2017

Issue:

Whether a person is liable to pay interest charged by the settlement commission when in the relevant period the primary liability of deducting tax is of the payer?

Decision:

Where the High Court of Calcutta had held that the primary liability of deducting tax for the concerned period is that of the payer, the assessee is not liable to pay interest as charged by the settlement commission u/s 234B and 234C, the Hon'ble Supreme Court, on hearing the parties, condoned the delay and admitted the SLP preferred by the Revenue.

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

Special Leave to Appeal (C) No(s). 35008/2013

Dated: July 14, 2017

Issue:

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

Decision:

The High Court of Bombay had refused to contravene with the findings of the Tribunal which held that every activity which bring into existence a new product would constitute production and process of bottling the LPG Gas into cylinder makes the same marketable on execution of the process which follows that a new product comes into existence and therefore liable to deduction u/s 80HHC, 80I and 80IA and dismissed the appeal on the ground that there was no substantial question of law. The Hon'ble Supreme Court condoned the delay and admitted the SLP preferred by the Revenue.

10. PR COMMISSIONER OF INCOME TAX vs. SHRI MAHESH KUMAR GUPTA

Diary No(s). 18573/2017

Dated: July 21, 2017

Issue:

Whether when search operations did not yield any fresh material warranting addition u/s 153A, the same would clothe the CIT with the authority to make additions on the basis of fresh appraisal of the existing materials that already form part of original assessment?

Decision:

Where the High Court of Delhi had held that when search and seizure did not result in any fresh material and amounts originally declared in the assessment returns were paid by the assessee, the CIT, has no opportunity to exercise his powers as it were on the basis of returns as filed originally and validly u/s 263 the Hon'ble Supreme Court condoned the delay and admitted the SLP preferred by the Revenue.

11. UNITECH HOSPITALITY SERVICES LTD vs. ASST COMMISSIONER OF INCOME TAX

Special Leave to Appeal (C) No(s). 16091/2017

Dated: July 21, 2017

Issue:

Whether voluntary expenses incurred towards conversion & development of commercial complex can be claimed as part of development cost if the same is included in sale consideration?

Decision:

The Hon'ble Supreme Court concurring with the opinion of the High Court of Delhi that such expenses cannot be claimed as part of development cost if it has already been included in the sale consideration, dismissed the SLP preferred by the Assessee on the ground that there was no merits in the petition.

12. COMMISSIONER OF INCOME TAX & ANR vs. THE NAGARBAIL SALT OWNERS COOPERATIVE SOCIETY LTD

Special Leave to Appeal (C) No(s) /2017 Diary No(s). 19900/2017

Dated: July 21, 2017

Issue:

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

Decision:

The Hon'ble Supreme Court condoned the delay and allowed the SLP preferred by the Revenue but however, the Apex Court dismissed the SLP concurring with the opinion of High Court of Karnataka that in the present case the amount transferred by Cooperative society to 'Distribution Pool Fund Account' could not be taxed.

13. COMMISSIONER OF INCOME TAX vs. NIRMA LTD

Special Leave to Appeal (C) No /2017 Diary No.18516/2017

Dated: July 21, 2017

Issue:

Whether when benefit is computed in terms of the sales tax liability in the hands of recipient it would any benefit on a day-to-day functioning of the business, or for making the industry more profitable?

Decision:

The High Court of Gujarat had cited the decisions in the case of **CIT vs. Birla VXL Ltd** wherein the Court observed that *“the benefit, though computed in terms of the Sales Tax liability in the hands of the recipient, the same was not meant to give any benefit on day-to-day functioning of the business, or for making the industry more profitable. The principle aim of the scheme was to cover the capital outlay already made by the assessee in undertaking special modernization of its existing industry”* and in the case of **Deputy Commissioner of Income-tax v. Munjal Auto Industries Ltd** wherein the Court had held that *“the subsidy though computed in terms of sales tax deferment or waiver, in essence it was meant for capital outlay expended by the assessee for set up of the unit in case of a new industrial unit and for expansion and diversification of an existing unit. As noted, such subsidy was available only to a new industrial unit or a unit*

undertaking expansion or diversification" and held that issues in the appeal are covered by the above mentioned cases and therefore answered in favour of the assessee. However, the Hon'ble Supreme Court condoned the delay and admitted the SLP preferred by the Revenue.

14. PR COMMISSIONER OF INCOME TAX-2 vs. M/s BUSSAN AUTO FINANCE INDIA PVT LTD

Diary No(s). 18724/2017

Dated: July 21, 2017

Issue:

Whether in absence of record to establish that the MoA of assessee has prevented it from earning the substantial income that it had, the tax could be levied even if it is clear that it is not merely the earning of income but also the nature of expenditure?

Decision:

Where the High Court of Delhi had answered in favour of the assessee that tax could not be levied considering the facts of the case, the Hon'ble Supreme Court dismissed the SLP preferred by the Revenue, leaving the question of law open.

15. COMMISSIONER OF INCOME TAX vs. KSB PUMPS LTD

Special Leave to Appeal (C) No /2017 Diary No.18461/2017

Dated: July 21, 2017

Issue:

Whether interest received along with sale price, would satisfy the requirements of section 80IB as having been derived from its business, and would be eligible for computation of benefit under that section?

Decision:

The High Court of Bombay had held that since this issue was concluded in the case of ***Vidyut Corporation***, it does not give rise to a separate question of law and therefore dismissed the appeal. The Hon'ble Supreme Court, however, admitted the appeal of the Revenue and issued notice to the respective parties to appear in Court to defend their case.

16. TAKSHASHILA REALTIES PVT LTD VS. DEPUTY COMMISSIONER OF INCOME TAX

SLP(C) No. 15656/2017

Dated: July 3, 2017

Issue:

The SCN issued detailed reasons that the objections filed by the assessee was disposed off by speaking order and special auditor was appointed only after obtaining relevant approval from Principal Commissioner of Income Tax. Whether procedure for passing an order u/s 142(2A) can be faulted when due opportunity of being heard was given to the assessee?

Decision:

The Hon'ble Supreme Court had Held that the AO cannot direct special auditor under Section 142 [2A] before calling for the accounts from the petitioner in the assessment proceedings. Therefore, such accounts are not required to be audited through Special Auditor. The Supreme Court condoned the delay and dismissed the SLP.

17. ASHOKBHAI H JARIWAL VS. ASSISTANT COMMISSIONER OF INCOME TAX

Special Leave to Appeal(C) No.015863/2017

Dated: July 3, 2017

Issue:

Whether contradicting statement made by the assessee recorded during the course of search & seizure relating to presence of huge cash, can be a ground for making additions u/s 69A ?

Decision:

The contradicting statement made by the assessee during the course of search & seizure relating to presence of huge cash, can form a ground for making additions u/s 69A. The Hon'ble Supreme Court had dismissed the petition and concurred with the opinion of High Court of Gujarat that contradicting statement made by the assessee can form basis of additions u/s 69A.

18. THE PRINCIPAL COMMISSIONER OF INCOME TAX GURGAON VS. AGILENT TECHNOLOGY(INTERNATIONAL) PVT LTD

Diary No. 15631/2017

Dated: July 4, 2017

Issue:

Whether the interim protection can continue beyond 365 days in deserving cases when an appeal was not decided by ITAT due to pressure in pendency of cases and the delay in disposal was not attributable to assessee in any manner?

Decision:

It was held that the interim protection could continue beyond 365 days in deserving cases when an appeal was not decided by ITAT due to pressure of pendency of cases and the delay in disposal was not attributable to assessee in any manner.

The Hon'ble Supreme Court condoned the delay and issued notices to the respective parties.

19. PRINCIPAL COMMISSIONER OF INCOME TAX DELHI VS. M/S PHI SEEDS LTD

**PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. DIARY NO(S). 15245/2017
DATED: JULY 4, 2017**

Issue:

Whether the provisions in Section 142(2C) before 1st April, 2008 empowered the AO to suo motu extend the time for submission of audit report?

Decision:

The Hon'ble Supreme Court had held that the provisions in Section 142(2C) before 1st April, 2008 did not empower the AO to suo motu extend the time for submission of audit report.

20. COMMISSIONER OF INCOME TAX JAIPUR VS. MS UMLESH GOEL

**Special Leave to Appeal (C) No/2017 Diary No.15741/2017
Dated: July 4, 2017**

Issue:

Whether the word "family" u/s 158-BC for search & seizure can be interpreted to cover all the family members, namely spouse & children?

Whether search u/s 132(1) has to be "person specific" & authorization warrant should specify the names of persons to be searched?

Decision:

The High Court of Rajasthan had held that the word "family" u/s 158-BC for search & seizure does not include all the family members, namely spouse & children. The High Court of Rajasthan in its impugned order also held that search u/s 132(1) had to be "person specific" & authorization warrant has to specify the names of the persons to be searched.

The Hon'ble Supreme Court condoned the delay and issued notices to respective parties on the interpretation of Sections 158-BC & 132(1).

21. ASSISTANT COMMISSIONER OF INCOME TAX MUMBAI VS. HATKESH CO OP HSG SOCIETY LTD

Special Leave to Appeal (c) No.Diary No(s). 15226/2017

Dated: July 4, 2017

Issue:

Whether in case of difference of opinion between the Co-ordinate Benches of the Tribunal, the matter has to be referred to a larger bench?

Decision:

The High Court of Bombay had held that the subsequent bench of Tribunal could request the President of Tribunal to refer to a larger bench to decide difference of opinion of an issue, if the subsequent bench did not agree with the binding decision of a co-ordinate bench.

The Hon'ble Supreme Court condoned the delay and granted leave.

22. PEBBLE INVESTMENT AND FINANCE LTD VS. INCOME TAX OFFICER

Petition(s) for Special Leave to Appeal (C) No(s).11784/2017

Dated: July 5, 2017

Issue:

Whether in absence of any contrary evidence or explanation as to which statement made is not credible, Can the statement made u/s 133A can be relied upon for purposes of assessment?

Decision

The High Court of Bombay had held that if there is an absence of contrary evidence or explanation as to why such statement was not credible statement, then the statement made u/s 133A could be relied upon for purposes of assessment. The Hon'ble Supreme Court dismisses the petition

23. PR COMMISSIONER OF INCOME TAX VS. M/S GOODVIEW TRADING PVT LTD

Diary No(s). 14679/2017

Dated: July 24, 2017

Issue:

Whether addition u/s 68 can be made , if the assessee has duly discharged its onus by submitting the necessary evidence available to establish the bona fide transactions?

Decision

The High Court of Delhi had held that when assessee has duly discharged its onus by submitting necessary evidence available to establish the bonafide transactions, No

additions can be made u/s 68. The Hon'ble Supreme Court condoned the delay and issued notice u/s 68.

24. NORTHERN COAL FIELDS LTD VS. ASST COMMISSIONER OF INCOME TAX & ORS

Special Leave to Appeal (C) No(s). 18140/2017

Dated: July 24, 2017

Issue

Whether the order of AO for recovery of demand for an A.Y. does not lead to setting aside of the demand itself, and it can be adjusted against the refund due for the previous year?

Decision

The High Court of Madhya Pradesh had held that the order of AO is not for recovery of a demand for an A.Y, it was not to lead demand itself to set aside and it could be adjusted against the refund due for the previous year.

The Hon'ble Supreme Court held that if there is an adjustment of tax in the next year, the balance amount, if any, the Income Tax Department must refund it back to the Petitioner. The Special Leave Petition was dismissed.

25. COMMISSIONER OF INCOME TAX AHMEDABAD VS. GUJARAT STATE INVESTMENT LTD

Diary No(s). 20742/2017

Dated: July 28, 2017

Issue

With respect to earlier assessment years before A.Y 2008-09, Whether provision of Rule 8D can be applicable?

Decision

The High Court of Gujarat had held that if it is pertaining to earlier assessment years before A.Y. 2008-09, then no disallowances can be made u/s 14A by applying the provision of Rule 8D. The Supreme Court condoned the delay and issued notices to respective parties on the issue of application of Rule 8D.

26. COMMISSIONER OF INCOME TAX VS. M/S ARCH FINE CHEMICAL PVT LTD

Diary No(s). 18546/2017

Dated: July 28, 2017

Issue

The Revenue preferred the present SLP challenging the judgment that the High Court of Bombay had held that when an identical issue raised by assessee had been decided in its favour by the Writ Court, no final order can be passed by an ITAT without referring such writ court's decision?

Decision

The High Court of Bombay had held that no final order can be passed by an ITAT without referring to such writ court's decision, when an identical issue was raised by assessee had been decided in its favour by the Writ Court.

The Supreme Court condoned the delay and issued notices to respective parties on the issue of unabsorbed depreciation.

27. COMMISSIONER OF INCOME TAX VS. SOCIETY OF INDIAN AUTOMOBILE MANUFACTURERS

Special Leave to Appeal (C) No/2017
Diary No.18560/2017
Dated: July 28, 2017

Issue

Whether mere circumstance of collecting seminar fees would not result in losing the trust in its essential character of being established for charitable purposes?

Decision

The assessee incorporated with the object of promoting awareness and information dissemination with respect to automobile industry and was also engaged in advocacy for that industry. For the relevant year, it was reported that the receipt of some amount towards fees for conducting seminars and other like activity. The High Court of Delhi had held that mere circumstance of collecting seminar fees would not result in losing the trust its essential character of being established for charitable purposes.

The Supreme Court condoned the delay and issued notices to respective parties on the issue of 'effect of collection of seminar fees by a trust, upon its charitable nature'.

28. M/S SNOWTEX INVESTMENT LTD VS. PRINCIPAL COMMISSIONER OF INCOME TAX

Special Leave to Appeal (C) No/2017
Diary No.10785/2017
Dated: July 28, 2017

Issue

Whether income arising out of trading in derivatives, is a business income and it does not fall within the purview of section 73?

Decision

The High Court of Calcutta had held that it does not fall under the purview of section 73 because income arising out of trading in derivatives, was a business income.

The Hon'ble Supreme Court condoned the delay and issued notices to respective parties on the issue of treatment of 'income arising to investment company out of trading in derivatives'.

29. PR COMMISSIONER OF INCOME TAX VS NC CABLES

Special Leave to Appeal (C)Diary No(s). 18577/2017

Dated: July 28, 2017

Issue

For examining the genuinity of transactions by AO for his own failure to investigate into the records submitted by assessee, can blame assessee while invoking additions u/s 68?

Decision

The High Court of Delhi had held that the AO for his own failure to investigate into the records submitted by assessee, for examining the genuinity of transactions, could not blame the assessee while invoking additions u/s 68.

The Supreme Court condoned the delay and grants leave to the Revenue Department to defend their case on the issue of 'additions made u/s 68 as a result of reopening proceedings'.

30.COMMISSIONER OF INCOME TAX VS. M/S PUNJAB INFRASTRUCTURE DEV BOARD

Income Tax Appeal No.73 of 2016

Dated: December 20, 2016

Issue

Whether the amendment made in Sec 201(1A) vide FA, 2010 nullifies the liability to pay interest for TDS default?

Decision

The High Court of Punjab & Haryana had held that the amendment made in Sec 201(1A) vide FA, 2010 did not nullify the liability to pay interest for TDS default.

The Hon'ble Supreme Court condoned the delay and issued notices to respective parties on the issue of 'liability to pay interest for TDS default, consequent to amendment of Section 201(1A)'.