



2025:DHC:8710-DB



\$~17, 18, 20, 29, 30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision : 26.09.2025***(17)**+ **W.P.(C) 15024/2025 CM APPL. 61869-71/2025**

YUKTI EXPORT

.....Petitioner

versus

INCOME TAX OFFICER WARD 60(7) DELHI

.....Respondent

(18)+ **W.P.(C) 15028/2025 CM APPL. 61880-82/2025**

INDER DEV GUPTA

.....Petitioner

versus

THE INCOME TAX OFFICER WARD 27(1)

.....Respondent

(20)+ **W.P.(C) 15039/2025 CM APPL. 61947-49/2025**

DELHI VOCATIONAL SCHOOL SOCIETY

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME
TAX CENTRAL CIRCLE 2

.....Respondent

(29)+ **W.P.(C) 15104/2025 CM APPL. 62101-03/2025**

MOUNT SHIKHAR FINANCIAL SERVICES LIMITED

.....Petitioner

versus

INCOME TAX OFFICER WARD 17 (1)

.....Respondent

(30)+ **W.P.(C) 15107/2025 CM APPL. 62105-07/2025**

RHITI TALENT MANAGEMENT PRIVATE LIMITED

.....Petitioner

versus

THE INCOME TAX OFFICER WARD 21(1)

.....Respondent

Present : Mr Anand Chaudhuri, Mr Kumail Abbas,
Mr Deepanshu Mehta, Mr Sahar Irfan and
Ms Riya Jain, Advocates for the petitioners.



Mr. Siddhartha Sinha, SSC
Mr. Gaurav Gupta, SSC, Mr. Shivendra
Singh, Mr. Yojit Pareek, JSCs and Mr.
Surya Jindal, Advocates for the respondents.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (ORAL)

1. A common issue has arisen in the captioned petitions, i.e., whether the Jurisdictional Assessing Officer ('JAO') or the Faceless Assessing Officer ('FAO') would have the jurisdiction to initiate re-assessment proceedings under Section 148 of the Income-Tax Act, 1961 ('the Act, hereinafter).

2. The contention of Mr. Anand Chaudhuri, learned counsel for the petitioners is that the issue is no more *res integra* inasmuch as there have been multiple judicial pronouncements stating that it is the FAO, that shall have the requisite jurisdiction to issue notices under Section 148 of the Act. In this regard, he has referred to the following judgments of various High Courts:-

- a. ***Hexaware Technologies Ltd. v. ACIT [2024] 162 taxmann.com 225 (Bombay HC);***
- b. ***Prakash Pandurang Patil v. ITO [2024:BHC-AS:32759-DB] (Bombay HC);***
- c. ***Sri Venkataramana Reddy Patloola v. DCIT [W.P. Nos. 13353, 16141 & 16877 of 2024] (Telangana HC);***
- d. ***Deepanjan Roy v. ADIT (International Taxation)-2 [W.P. No.***



23573 of 2024] (Telangana HC);

- e. ***Jatinder Singh Bhangu v. Union of India [CWP 15745 of 2024] (Punjab & Haryana HC);***
- f. ***Royal Bitumen (P.) Ltd. v. ACIT [2024] 164 taxmann.com 606 (Bombay HC);***
- g. ***Everest Kanto Cylinder Ltd. v. DCIT/ACIT [2024] 165 taxmann.com 192 (Bombay HC);***
- h. ***Sundaram Multi Pap Ltd. v. ACIT [2024] 164 taxmann.com 608 (Bombay HC);***
- i. ***Venus Jewel v. ACIT [2024] 164 taxmann.com 414 (Bombay HC).***

3. He states that the Revenue carried some of these judgments in appeal, and the Supreme Court has since conclusively settled the issue, by dismissing the SLP in ***Deepanjan Roy (Supra)*** and ***Prakash Pandurang Patil (Supra)***. According to him, the latter dismissal was on the merits of the case as is clear from the order of the Supreme Court, the relevant portion whereof is reproduced as under:-

“2. Even otherwise, we see no reason to interfere with the impugned order passed by the High Court.

3. The Special Leave Petition is, therefore, dismissed on the ground of delay as well as merits.”

His submission is that the Supreme Court has settled the law under Article 141 of the Constitution of India and laid down that only FAO would have the jurisdiction to issue notices under Section 148 of the Act.



4. He states that though this Court has held conversely, that both JAO and FAO would have the concurrent jurisdiction to initiate the proceedings, the same runs contrary to the judgment of the Supreme Court in **ITO, Ward 5, Panvel & Ors. v. Prakash Pandurang Patil [SLP(C)Diary No. 39689/2025]**, dismissed on 18.08.2025, as well as the statutory mandate of Section 151A of the Act.

5. He submits that the contrary view propounded by a co-ordinate bench of this Court in **T.K.S. Builders (P.) Ltd. v. ITO, [2024] 167 taxmann.com 759 (Del.)**, followed in **M/s Mala Petrochemicals and Polymers v. ITO, WP(C) 12011/2025** and **Mehak Jagga v. ITO, WP(C) 13149/2025**, recognising a supposed concurrent jurisdiction of JAO and FAO, is *ex facie per incuriam*, as it disregards the statutory mandate of Section 151A and binding law under Article 141. The doctrine of *per incuriam*, as settled by the Supreme Court in **Hyder Consulting (UK) Ltd. v. State of Orissa, (2016) 6 SCC 362**, squarely applies since the decision of this Court was rendered in disregard of binding pronouncements of the Supreme Court and is thus not good law.

6. He further stated that this Court in **PC Jeweller Ltd. v. ACIT, W.P.(C) 13229/2024, dated 23.01.2025**, had dismissed the writ petition therein by relying upon the ratio of **T.K.S. Builders (Supra)**. However subsequently, in appeal, the Supreme Court *vide* SLP (C) Diary No. 13266/2025, order dated 04.04.2025, categorically directed that the Revenue may proceed with the reassessment proceedings, but any adverse order against the petitioner therein shall not be given effect to until further orders. This direction of the Supreme Court, by necessary implication, constitutes an interim stay and



any reliance on ***T.K.S. Builders*** (supra), is no longer tenable in law. To buttress this argument, he has relied upon the judgments of the Supreme Court in ***S. N. Mukherjee vs. Union of India***, (1990) 4 SCC 594 and ***Kunhayammed and Others vs. State of Kerala and Another***, (2000) 6 SCC 359.

7. *Per contra*, Mr. Siddhartha Sinha, learned Senior Standing Counsel for the respondents submits that the contention of Mr. Chaudhuri are unmerited inasmuch as this Court has followed a consistent position that insofar as the jurisdiction of Delhi is concerned, both JAO and FAO would have concurrent jurisdiction to initiate proceedings for re-assessment. Though the judgment in ***TKS Builders (Supra)*** has been taken in appeal before the Supreme Court, there has been no stay of the same.

8. He states that in any case, the order of the Supreme Court in ***Prakash Pandurang Patil (Supra)*** does not state reasons for dismissal, and as such, it is a dismissal *in limine*. As such, the order does not read down the judgment in ***T.K.S. Builders (Supra)*** or affirm the judgment of the Bombay High Court in ***Hexaware Technologies Ltd. (Supra)***, as has been claimed by Mr. Chaudhuri.

9. Having heard the learned counsel for the parties, we are of the view that the submission of Mr. Chaudhuri cannot be accepted for the reason that this Court has settled the law relating to the issue in ***TKS Builders (Supra)***, which though under challenge before the Supreme Court, has not been stayed.

10. This Court has maintained a consistent position, that both JAO and FAO possess concurrent jurisdiction to initiate reassessment proceedings



under Section 148 of the Act. In fact, in ***PC Jeweller Ltd. (Supra)***, a co-ordinate bench of this Court had dismissed a writ petition seeking similar relief by following the judgment in ***TKS Builders (Supra)***. Though the said judgment has been taken in appeal before the Supreme Court, the Revenue has been permitted to continue the proceedings with a caveat that any order, if passed adverse to the petitioner therein shall not be given effect.

11. That apart, even in the cases of ***M/s Mala Petrochemicals and Polymers vs. the Income Tax Officer & Ors. WP(C) 12011/2025, decided on 19.08.2025, Mehak Jagga vs. ITO (W.P.(C) 13149/2025, decided on 28.08.2025, All India Kataria Education Society vs. DCIT W.P.(C) 14225/2025, decided on 15.09.2025 and M/s Empire Fasteners vs. The Assistant Commissioner of Income Tax & Anr. W.P.(C) 14754/2025, decided on 23.09.2025***, we have dismissed similar petitions by relying upon ***TKS Builders Pvt. Ltd. (Supra)***.

12. Mr. Chaudhuri has put forth a contention that since the Supreme Court has dismissed the SLP preferred against the judgment of the Bombay High Court in ***Prakash Pandurang Patil (Supra)***, wherein the High Court had held that only FAO would have the jurisdiction to initiate proceedings under Section 148 of the Act, thereby meaning that the decision has attained finality, and would, by necessary implication read down the judgment of this Court in ***TKS Builders (Supra)***. We do not find any merit in the submission, for the reason that the Supreme Court while dismissing the SLP, had only stated that it does not find any merit in the SLP, without giving any detailed reasons.

13. In ***Fuljit Kaur vs. State of Punjab and Others, (2010) 11 SCC 455***,



the Supreme Court in paragraph 7 has held as under:-

*“7. There is no dispute to the settled proposition of law that dismissal of the special leave petition in limine by this Court does not mean that the reasoning of the judgment of the High Court against which the special leave petition has been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. **It simply means that this Court did not consider the case worth examining for the reason, which may be other than merit of the case. Nor such an order of this Court operates as res judicata. An order rejecting the special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law or a binding precedent.**”*

(Emphasis supplied)

14. In this regard, we may refer to the judgment of the Supreme Court in ***State of Orissa and Another vs. Dhirendra Sundar Das and Others, (2019) 6 SCC 270***, wherein it was observed as under:-

“9.27. It is a well-settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees’ Welfare Assn. V. Union of India [Supreme Court Employees’ Welfare Assn. V. Union of India, (1989) 4 SCC 187, paras 22 and 23 : 1989 SCC (L&S) 569] and State of Punjab v. Davinder Pal Singh Bhullar [State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770, paras 112 and 113 : (2012) 4 SCC (Civ) 1034 : (2012) 4 SCC (Cri) 496 : (2014) 1 SCC (L&S) 208] , that the dismissal of an SLP in limine simply implies that the case before this Court was not considered



worthy of examination for a reason, which may be other than the merits of the case. **Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution.**”

(Emphasis supplied)

15. Even in the judgment in ***Kunhayammed and Others (Supra)*** relied upon by Mr. Chaudhuri, the Supreme Court has observed as under:-

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are — “heard and dismissed”, “dismissed”, “dismissed as barred by time” and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. **The Court may apply its mind to the merit worthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say “dismissed on merits”. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court.**



The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take



away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

... ..

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to



appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.”

(Emphasis supplied)

16. Further, in ***Khoday Distilleries Ltd. & Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal, (2019) 4 SCC 376***, the Supreme Court held as under:-

“26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case, SCC p. 384)

“(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline,



the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

17. Mr. Chaudhuri has endeavoured to demonstrate that the reasons assigned by the Supreme Court, in ***Prakash Pandurang Patil (Supra)***, which we have reproduced in paragraph 3 above, would make it clear that the SLP has been dismissed both on merits and on delay. According to him, this would mean that by necessary implication, the judgment in ***Hexaware Technologies Ltd. (Supra)***, relied upon by the Bombay High Court in the impugned judgment therein, would stand affirmed and the judgment of this Court in ***TKS Builders (Supra)*** would stand negated. This plea does not appeal to us, for the reason that the Supreme Court has only dismissed the SLP without dealing with the issue. Going by the above discussed judicial pronouncements, the same cannot be said to have set aside ***TKS Builders***



(Supra). That apart, we find that the SLP preferred against **TKS Builders (Supra)** is still pending adjudication before the Supreme Court.

18. As such, the judgment in **TKS Builders (Supra)** would still hold the fort insofar as the jurisdiction of Delhi is concerned. We are bound by the same.

19. Though there is no dispute on the proposition of law laid down in **Hyder Consulting (UK) Ltd. (Supra)**, the same would not come to the rescue of the petitioners in the peculiar facts of this case.

20. In view of the above discussion, we find no merit in the present appeals, the same are dismissed. The pending applications having become infructuous are also dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 26, 2025

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