

ITEM NO.44

COURT NO.6

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 23054/2014
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 21/02/2014
IN CMA NO. 104395/2013 IN ITA NO. 60/2006 PASSED BY THE HIGH COURT
OF JUDICATURE AT ALLAHABAD)

THE COMMISSIONER OF INCOME TAX CENTRAL -I, KANPUR PETITIONER(S)
VERSUS

SHRI SUBRATA ROY RESPONDENT(S)
(WITH INTERIM RELIEF AND OFFICE REPORT)

WITH
S.L.P. (C)...CC NO. 11504/2014
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 17211/2014
(WITH INTERIM RELIEF AND OFFICE REPORT)

S.L.P. (C)...CC NO. 6948/2015
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 16645/2014
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17566/2014
(WITH INTERIM RELIEF AND OFFICE REPORT)

Date : 04/07/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)	Mr. Maninder Singh, ASG Mr. S.A. Haseeb, Adv. Mr. Manish Pushkarna, Adv. Mr. Vikas Malhotra, Adv. Mrs. Anil Katiyar, Adv.
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For Respondent(s)	Mr. Kapil Sibal, Sr. Adv. Mr. Aarohi Bhalla, Adv. Mr. Satyen Sethi, Adv. Mr. Goutam Awasthi, Adv. Mr. Waseequddin, Adv. Ms. Sujata Kurdukar, Adv.
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UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5514 OF 2016
[Arising out of Special Leave Petition
(Civil) No.23054/2014]

THE COMMISSIONER OF INCOME TAX
CENTRAL -I, KANPUR . . . APPELLANT

VERSUS

SUBRATA ROY . . . RESPONDENT

WITH

CIVIL APPEAL NO.5515 OF 2016
[@ SLP (C) NO.16508/2016 @ CC NO.
11504/2014]

CIVIL APPEAL NO.5516 OF 2016
[@ SLP (C) NO. 17211/2014]

CIVIL APPEAL NO.5517 OF 2016
[@ S.L.P. (C) NO.16514/2016 @
CC NO. 6948/2015]

CIVIL APPEAL NO.5518 OF 2016
[@ SLP (C) NO. 16645/2014]

CIVIL APPEAL NO.5519 OF 2016
[@ SLP (C) NO. 17566/2014]

ORDER

1. Delay condoned.
2. Leave granted.
3. The challenge in the present Special Leave Petitions is against the common order dated 21st February, 2014 by which the High Court of Allahabad has recalled the final order dated 27th August, 2013 passed in Income Tax Appeal Nos.59/2006, 57/2006, 58/2006, 60/2006, 61/2006 and 62/2006 by exercising jurisdiction under Section 260A(7) of the Income Tax Act, 1961 read with Order XLI rule 21 of the Code of Civil Procedure, 1908.
4. A perusal of the judgment and order dated 27th August, 2013 disposing of the appeals would go to show that the said order is not an ex parte order. This would be evident from a mere reading of the order

dated 27th August, 2013, the relevant part
whereof is extracted herein below:

"On the other hand, Sri Wasqudeen Ahmed, learned counsel for the assessee has justified the impugned order passed by the Tribunal. He submits that the whole approach of the AO is incorrect as the AO has accepted that the loans taken by the assessee were invested and purchased in the share. The entire observation of the AO are based only on surmise and conjectures and hypotheses and on the basis of the imaginary and illusionary, which cannot be found as basis for rejecting the assessee's claim for payment of interest. The case of the assessee is fully covered by the judgment of the Hon'ble Apex Court in the Moody's case (supra). He mentioned on 02.01.2000, an advertisement was published in the "Times of India" by Sahara India Parivar, in which, it was stated that all the Directors have taken an oath neither they nor their family members can ever share the profit or assets of the company. But the assessment will have to be completed as per the provisions contained in the Income Tax Act and not on the basis of any statement or advertisement published here and there.

Learned counsel further submits that the assessee took the loan from M/s Sahara India Mutual Benefits Co. Ltd. (SIMBCL) and claimed payment of interest to the said company. Such interest had been declared by the said company in its income. A person will not take investment in share just to throw away his money unless and until he has a hope to earn an income from such investment. Whether the investment is bad investment or a good investment depends upon the study of the person making the investment in the performance of the company.

It may be noticed that the companies giving outstanding performance go out of the market and the companies performing not so well tends to start showing better results. Lastly, he submits that in view of the judgment of the Hon'ble Apex Court in the case of Moody (supra), the interest in shares has to be allowed on the borrowed funds. So, he made a request that the appeals may kindly be dismissed."

5. The participation of the assessee in the hearing of the appeals is also evident from various other parts of the order dated 27th August, 2013 which however

need not be extracted in the present order.

6. Shri Kapil Sibal, learned Senior Counsel appearing for the respondents - assessee has sought to persuade the Court that as the discretionary power vested in the High Court has been exercised in favour of the assessee this Court should not interfere with the same in the exercise of jurisdiction under Article 136 of the Constitution of India. Shri Sibal has also pointed out the difficulties of the Senior Counsel (who was to come from Bombay) that had prevented his appearance on 7th August, 2013 and has also urged that a request was made to accommodate the Senior Counsel only for a day and, in fact, the said Senior Counsel had come to Lucknow and argued other cases of the assessee on 8th August, 2013.

7. We have considered the aforesaid submissions. The question is one of

availability of jurisdiction under Order XLI rule 21 of the CPC, namely, that the order passed in the appeal is an ex parte order. Not only the said order dated 27th August, 2013 is not an ex parte order as contemplated by the provisions of the Code of Civil Procedure, 1908, the final order dated 27th August, 2013 passed by the High Court clearly contains findings (extracted above) which is to the contrary. In these circumstances, we are of the view that the High Court did not have the jurisdiction under Order XLI rule 21 CPC to recall the final order dated 27th August, 2013 passed in the Income Tax Appeals. The power available under Order XLI rule 21 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereunder cannot be exercised.

8. In view of the above discussions, we set aside the order of the High Court

dated 21st February, 2014; allow the appeals
filed by the Revenue leaving the
assessee(s) with the liberty to challenge
the final order dated 27th August, 2013 in
accordance with law, if he is so advised
and so inclined.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
JULY 04, 2016