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Special Leave Petition not permitted directly before the Supreme Court against the ruling of the Authority for Advance Tax Rulings

In brief

In the case of Columbia Sportswear Company¹, the Supreme Court has ruled that the ruling of the Authority for Advance Rulings (AAR) should be challenged by way of a writ before the High Court. However, if a substantial question of general importance is involved or a similar question is already pending before the Supreme Court, the Petitioner can challenge the ruling by filing a special leave petition (SLP) directly with the Supreme Court.

Facts

- The petitioner, Columbia Sportswear Company, a company based in the United States, had established liaison offices in Chennai and Bangalore with the approval of the Reserve Bank of India (RBI).
- The petitioner filed an application before the AAR to seek a ruling on the question of whether or not the petitioner would have business connections or a permanent establishment in India based on the nature of the activities carried out by the petitioner's liaison office in India. If the petitioner had business connections or a permanent establishment in India, how the profits would be

¹ Columbia Sportswear Company v. DIT [TS-549-SC-2012]

computed under Income-tax Act, 1961 (the Act)/Double Tax Avoidance agreement between India and the USA (the tax treaty).

- The AAR held that the petitioner's liaison offices constitute business connections or a permanent establishment in India under the Act and the tax treaty respectively. The income attributable to the operations carried out in India is taxable in India under the provisions of the Act and the tax treaty.
- The petitioner filed a SLP before the Supreme Court, challenging the AAR ruling.
- However, the Supreme Court passed orders calling upon the parties to address the maintainability of the SLP filed by the petitioner.

Issue before the Supreme Court

On the maintainability of the SLP as called upon by the Supreme Court:

Can an advance ruling pronounced by the AAR be challenged by the applicant or the Commissioner under Article 226/227 of the Constitution before the High Court or under Article 136 of the Constitution directly before the Supreme Court?

Petitioner's contention

- The orders of the quasi-judicial Tribunal can be challenged before the High Court by way of a judicial review under Article 226 /227, or before the Supreme Court by way of an appeal under Article 136 of the Constitution.
- The AAR is a quasi-judicial Tribunal as:
 - The order of the authority is an adjudicating order determining a question of law or fact

- The provisions of section 245R(5) of the Act mandates compliance with the principles of natural justice
- The AAR is vested with the powers of a civil court in relation to the discovery and inspection, enforcing the attendance of persons and examining them under oath, compelling the production of books of account etc.
- As AAR is a quasi-judicial Tribunal, its orders can be challenged before the High Court or the Supreme Court.
- The Tribunal, as per Article 136 of the Constitution, includes within its ambit all adjudicating bodies, provided they are created by the State and are invested with judicial as distinguished from purely administrative or executive functions².
- Notwithstanding the fact that the order of the Tribunal that is constituted under an Act of legislature for adjudicating any particular matter is final, the High Court and the Supreme Court are vested with the powers to exercise jurisdiction under the Constitution even if the order of the Tribunal is final under the Act³.

² Durga Shankar Mehta v. Thakur Raghuraj Singh and Others [1955] 1 SCR 267 (SC)

³ Kihoto Hollohan v. Zaccillhu and Others [1992] Supp (2) SCC 651 (SC)

Jyotendrasinhji v. S.I Tripathi and Others [1993] Supp(3) SCC 389 (SC)

L Chandra Kumar v. Union of India and Ors [1997] 3 SCC 261 (SC)

UOI v. R.Gandhi, President, Madras Bar Association [2010] 11 SCC 1 (SC)

Supreme Court Ruling

AAR is a Tribunal

- Under Article 226 of the Constitution, the High Court can issue writs of Certiorari and Prohibition to control the proceedings of not only a subordinate court but also of any person, body or authority having the duty to act judicially, such as a Tribunal.
- Under Article 227 of the Constitution, the High Court has superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction.
- Under Article 136 of the Constitution, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or Tribunal in the territory of India.
- In view of the above, it is important to determine whether the AAR is a Tribunal within the meaning of the expression in Articles 136 and 227 of the Constitution and whether the AAR has a duty to act judicially and is amenable to writs of Certiorari and Prohibition under Article 226 of the Constitution.
- The test to determine whether a body is a Tribunal or not is to find out whether it is vested with the judicial power of the State by any law to pronounce upon rights or liabilities arising out of some special law⁴.

⁴Harinagar Sugar Mills v. Shyam sunder (AIR 1961 S.C. 1669)

Jaswant Sugar Mills Ltd v. Lakshmi Chand & Ors (AIR 1963 S.C 677)

Associated Cement Companies Ltd v. P.N Sharma & Anr (AIR 1965 SC 1595)

UOI v. R.Gandhi, President, Madras Bar Association [2010] 11 SCC 1 (SC)

- Based on the examination of the provisions in Chapter XIX-B of the Act⁵ on Advance Ruling, it is clear that:
 - The AAR may determine the tax liability arising out of a transaction. It may include a determination on a issue of fact or issue of law;
 - The AAR may determine the quantum of income and such determination may include a determination on a issue of fact or issue of law;
 - The determination of the AAR is not just advisory but binding. It is binding for the transaction for which it is sought and for the parties involved in respect of that transaction;
 - The ruling has persuasive value for others. However, it does not mean that a principle of law laid down in a case will not be followed in future.
- Therefore, the AAR is a body exercising judicial power conferred on it by Chapter XIX-B of the Act and is a Tribunal within the meaning of the expression in Article 136 and Article 227 of the Constitution.

Jurisdiction of Supreme Court and the High Court over AAR ruling

- Articles 226, 227 and Article 136 are constitutional provisions vesting jurisdiction on the Supreme Court and the High Court. Therefore, provisions of the Act of legislature making the decision of the Authority final or binding will not affect the Court's powers to exercise jurisdiction over applications challenging the AAR rulings⁶.

⁵ Chapter XIX-B deals with Advance Rulings

⁶ Kihoto Hollohan v. Zachillhu and Others [1992] Supp (2) SCC 651 (SC)

Jyotendrasinhji v. S.I Tripathi and Others [1993] Supp (3) SCC 389 (SC)

Jurisdiction is not with the Supreme Court only

- The High Courts are vested with the powers to exercise judicial superintendence over the decisions of all courts and Tribunals within their respective jurisdictions.
- If the ruling of the AAR is not permitted to be challenged before the High Court, it would negate a part of the basic structure of the Constitution.
- Considering that the objective of the AAR mechanism is to get an advance ruling in respect of a transaction expeditiously and apprehension that the writ petition may be pending for years before the High Court if only a writ petition is permitted, the Supreme Court opined that the writs against the AAR rulings should be heard directly by the Division Bench of the High Court and be decided as expeditiously as possible.

Maintainability of the current petition filed before the Supreme Court

- As per Article 136 of the Constitution, the Supreme Court has discretionary powers to grant a SLP from any order passed by the Court or Tribunal in the territory of India.
- Even if good grounds are made in the SLP for challenging an advance ruling before the Supreme Court, it may still, at its discretion, refuse to grant special leave on the grounds that the challenge to the ruling of the AAR can also be made to the High Court under Articles 226 and/or 227 of the Constitution on the same grounds.

- In the event that a substantial question of general importance is not involved or similar questions are not pending before the Supreme Court, the Supreme Court will not be inclined to entertain a SLP directly against the ruling of the AAR.
- In absence of involvement of substantial question of general importance or any similar question pending before the Supreme Court in the current petition, the petitioner is not permitted to approach the Supreme Court directly. Accordingly, the SLP was disposed granting liberty to the petitioner to move to the appropriate High Court.

Conclusion

While deciding the next steps against the ruling of the AAR, the question always arises whether a writ petition should be filed before the High Court or whether it should be challenged before the Supreme Court. In this landmark judgement, the Supreme Court has laid down the law that the aggrieved party should file the writ before the High Court. However, if the ruling gives rise to substantial question of general importance or any similar question pending before the Supreme Court, then SLP can be filed directly with the Supreme Court.

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