COLUMBIA SPORTSWEAR COMPANY A

v.

DIRECTOR OF INCOME TAX, BANGALORE

(Special Leave Petition (C) No. 31543 of 2011)

JULY 30, 2012 B

[S.H. KAPADIA, CJI, A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Income Tax Act, 1961 - Chapter XIX-B; Sections 245N(a) and 245S - Authority for Advance Rulings (Income Tax) - Whether an advance ruling pronounced by the Authority can be challenged u/Article 226/227 of the Constitution before the High Court or u/Article 136 of the Constitution before the Supreme Court - Whether the Authority, if not a court, is a tribunal within the meaning of expression in Articles 136 and 227 of the Constitution and whether the Authority has a duty to act judicially and is amenable to writs of Certiorari and Prohibition u/Article 226 of the Constitution - Held: The Authority 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 Articles 136 and 227 of the Constitution - Sub-section (1) of s.245S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of Supreme Court u/Article 136 of the Constitution or the jurisdiction of the High Court u/ Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority - It cannot be held that an advance ruling of the Authority can only be challenged u/Article 136 of the Constitution before Supreme Court and not u/Articles 226 and/or 227 of the Constitution before the High Court - However, when an advance ruling of the Authority is challenged before the High Court u/Articles C D E F G

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A *226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided expeditiously- Even if good grounds are made out in a SLP u/Article 136 for challenge to an advance ruling given by the Authority, the Supreme Court may still, in its discretion, refuse* B *to grant special leave on the ground that the challenge to the advance ruling of the authority can also be made to the High Court u/Articles 226 and/or 227 of the Constitution on the self same grounds - Unless, a SLP raises substantial questions of general importance or a similar question is already pending* C *before the Supreme Court for decision, the Supreme Court does not entertain a SLP directly against an order of the tribunal - The instant SLP neither raised any substantial question of general importance nor was it shown that a similar question was already pending before the Supreme Court for* D *which the petitioner should be permitted to approach the Supreme Court directly against the advance ruling of the Authority - Instant SLP accordingly disposed of with liberty to the petitioner to move the appropriate High Court u/Article 226 and/or 227 of the Constitution - High Court concerned to ensure that the Writ Petition, if filed, is heard by the Division* E *Bench hearing income-tax matters and is disposed of expeditiously - Constitution of India, 1950 - Articles 136, 226 and 227.*

Kihoto Hollohan v. Zachillhu and Others **1992 Supp (2)** F **SCC 651: 1992 (1) SCR 686;** *Jyotendrasinhji v. S.I. Tripathi and Others* **1993 Supp (3) SCC 389: 1993 (2) SCR 938;** *L. Chandra Kumar v. Union of India and Others* **(1997) 3 SCC 261: 1997 (2) SCR 1186 and** *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* **AIR 1970 SC** G **1520: 1971 (1) SCR 304 - relied on.**

Durga Shankar Mehta v. Thakur Raghuraj Singh and Others **(1955) 1 SCR 267 and** *Union of India & Anr. v. Azadi Bachao Andolan & Anr.* **(2003) 263 ITR 706 - referred to.**

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Cyril Eugene Pereira, In re. **(1999) 239 ITR 650 and** *Groupe Industrial Marcel Dassault, In re* **(2012) 340 ITR 353 (AAR) - referred to.**

"Constitutional Law of India" (Fourth Edition) by H.M. Seervai - referred to.

Words and Phrases - Expression "tribunal" - Meaning of - Held: The test for determining 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 law.

Harinagar Sugar Mills v. Shyam Sunder **AIR 1961 S.C. 1669: 1962 SCR 339;** *Jaswant Sugar Mills Ltd. v. Lakshmi Chand & Ors.* **AIR 1963 SC 677: 1963 Suppl. SCR 242;** *Associated Cement Companies Ltd. v. P.N. Sharma & Anr.* **AIR 1965 SC 1595: 1965 SCR 366;** *Union of India v. R. Gandhi, President, Madras Bar Association* **(2010) 11 SCC 1: 2010 (6) SCR 857 - relied on.**

Case Law Reference:

(1955) 1 SCR 267	**referred to**	**Para 5**
1992 (1) SCR 686	**relied on**	**Para 5**
1993 (2) SCR 938	**relied on**	**Para 5**
1997 (2) SCR 1186	**relied on**	**Para 5**
1962 SCR 339	**relied on**	**Para 7**
1963 Suppl. SCR 242	**relied on**	**Para 7**
1965 SCR 366	**relied on**	**Para 7**
2010 (6) SCR 857	**relied on**	**Para 7**
(1999) 239 ITR 650	**referred to**	**Para 9**

(2003) 263 ITR 706	**referred to**	**Para 9**
(2012) 340 ITR 353	**referred to**	**Para 12**
1971 (1) SCR 304	**relied on**	**Para 13**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 31543 of 2011 etc.

From the Judgment & Order dated 08.08.2011 of the Authority for Advanced Rulings (Income Tax), New Delhi in AAR No. 862 of 2009.

WITH

SLP (C) Nos. 3318 & 13760 of 2011, C.A. Nos. 2996, 5839 of 2008, 6987 of 2010 & 7035, 10064, 11327, 9768 & 9775 of 2011.

Mohan Parasaran, Gaurab Banerjee, ASG, Harish N. Salve, Ambhoj Kumar Sinha, Nageswar Rao, Shayari, Sumit Goel, Nishith Desai, Ashish Kabra, Shashank Kunwar, Ekansh Mishra, Dhruv Sanghvi, Pratibha Jain (for Parekh & Co.), Mukesh Butani, H. Raghavendra Rao, Arijit Prasad, Rahul Yadav, Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Neha Nagpal, Nakul Mohta, Shikha Sarin, D.L. Chidananda, Gaurav Dhigra, A.K. Srivastava, Vikas Malhotra, Anil Katiyar (for B.V. Balaram Das), Vanita Bhargava, Ajay Bhargava, Sanjay Shanghvi, Nitin Mishra (for Khaitan & Co.), F.V. Irani, Rustom B. Hathikhanawala, Balbir Singh, Rupender Sinhmar, Abhishek Singh Baghel, Deepal, Rajesh Kumar, Kamal Mohan Gupta, Vivek B. Saharya, Vishnu B. Saharya, V.B. Saharya (for Saharya and Co.) for the appearing parties.

The order of the Court was delivered by

A.K. PATNAIK, J.

SPECIAL LEAVE PETITION (C) No. 31543 of 2011:

1. This is a petition under Article 136 of the Constitution

of India seeking special leave to appeal against the order dated 08.08.2011 of the Authority for Advance Rulings (Income Tax) constituted under Chapter XIX-B of the Income Tax Act, 1961 (for short 'the Act') in A.A.R. No.862 of 2009.

2. The petitioner is a company incorporated in the United States of America (for short 'the USA') and is engaged in the business of designing, developing, marketing and distributing outdoor apparel. For making purchases for its business, the petitioner established a liaison office in Chennai with the permission of the Reserve Bank of India (for short 'the RBI') in 1995. The RBI granted the permission in its letter dated 01.03.1995 subject to the conditions stipulated therein. The permission letter dated 01.03.1995 of the RBI stated that the liaison office of the petitioner was for the purpose of undertaking purely liaison activities viz. to inspect the quality, to ensure shipments and to act as a communication channel between head office and parties in India and except such liaison work, the liaison office will not undertake any other activity of a trading, commercial or industrial nature nor shall it enter into any business contracts in its own name without the prior permission of the RBI. The petitioner also obtained permission on 19.06.2000 from the RBI for opening an additional liaison office in Bangalore on the same terms and conditions as mentioned in the letter dated 01.03.1995 of the RBI.

3. On 10.12.2009, the petitioner filed an application before the Authority for Advance Rulings (for short 'the Authority') on the questions relating to its transactions in its liaison office in India set out in Annexure-II to the application. Questions No. 1 to 6 as set out in Annexure-II to the application of the petitioner before the Authority are extracted hereinbelow:

> "1. Whether based on the nature of activities carried on by the Liaison Office ['India LO'] of the Applicant in India, as listed in the Statement of relevant facts [Annexure III],

A any income accrues or arises in India as per Section 5(2)9B) of the Act?

2. Whether based on the nature of activities carried on by the India LO, as listed in the Statement of relevant facts [Annexure III], the Applicant can be said to have a business B connection in India as per the provisions of Section 9(1)(i) of Act read with its Explanation 2?

3. If the answer to Query 2 is in the affirmative, whether various activities carried out by the India LO, as listed in C the Statement of relevant facts [Annexure III], are covered under the phrase 'through or from operations which are confined to the purchase of goods in India for the purpose of export' as stated in part (b) of Explanation 1 to Section 9(1)(i) of the Act?

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4. If the answer to Query 3 is in the negative, how would the profits attributable to the 'operations in India' be determined and what would be the broad principles to be borne in mind for attributing income to the India LO?

E 5. Whether the India LO creates a permanent establishment ['PE'] for the Applicant in India under Article 5(1) of the Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains entered into between the F Government of the Republic of India and the Government of the United States of America ['Treaty'] read with the PE exclusion available for purchase function in terms of paragraph 3(d) of Article 5 of the Treaty?

G 6. If the answer to Query 5 is in the affirmative, how would the profits attributable to the PE in India be determined and what would be the broad principles to be borne in mind for attributing income to India LO under the Treaty?'

4. The respondent filed his reply dated 10.12.2010 to the

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aforesaid application of the petitioner before the Authority. The petitioner also filed its response dated 08.02.2011 to the reply of the respondent. The Authority heard the petitioner and the respondent and passed the impugned order dated 08.08.2011. In para 34 of the impugned order, the Authority gave its ruling on the six questions as follows:

> "(1) A portion of the income of the business of designing, manufacturing and sale of the products imported by the applicant from India accrues to the applicant in India.
>
> (2) The applicant has a business connection in India being its liaison office located in India.
>
> (3) The activities of the Liaison Office in India are not confined to the purchase of goods in India for the purpose of export.
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> (4) The income taxable in India will be only that part of the income that can be attributed to the operations carried out in India. This is a matter of computation.
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> (5) The Indian Liaison Office involves a 'Permanent Establishment' for the applicant under Article 5.1 of the DTAA.
>
> (6) In terms of Article 7 of the DTAA only the income attributable to the Liaison Office of the applicant is taxable in India."

Aggrieved, the petitioner has challenged the impugned order on various grounds mentioned in this special leave petition.

5. On 10.02.2012, we passed orders calling upon the learned counsel for the parties to first address us on the question of maintainability of special leave petitions filed either by the assessee or by the Department against the advance rulings of the Authority. Learned counsel for the parties referred to the provisions of Chapter XIX-B of the Act to show that the

A Authority is a quasi-judicial Tribunal. They submitted that the order of the Authority is an adjudicating order determining a question of law or fact specified in the application and sub-section (5) of Section 245R mandates compliance with the principles of natural justice. They further submitted that the B Authority is also vested with the powers of a civil court in relation to the discovery and inspection, enforcing the attendance of persons and examining them on oath and compelling the production of books of account, etc. They argued that as the Authority is a quasi-judicial Tribunal, its orders can be C challenged before the High Court by way of judicial review under Article 226/227 of the Constitution or before this Court by way of an appeal under Article 136 of the Constitution. They submitted that this Court may, however, decline to interfere with the order passed by the Authority in exercise of its powers under D Article 136 of the Constitution where it feels that it would be more appropriate that the order of the Authority must first be examined by the High Court under Article 226/227 of the Constitution. They relied upon the decision of this Court in *Durga Shankar Mehta v. Thakur Raghuraj Singh and Others* [(1955) 1 SCR 267] in which it has been held that the E expression "Tribunal" used in 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 functions. They cited the decisions of this Court in *Kihoto Hollohan v.* F *Zachillhu and Others* [1992 Supp (2) SCC 651], *Jyotendrasinhji v. S.I. Tripathi and Others* [1993 Supp (3) SCC 389], *L. Chandra Kumar v. Union of India and Others* [(1997) 3 SCC 261] and *Union of India v. R. Gandhi, President, Madras Bar Association* [(2010) 11 SCC 1] in support of their G submission that where a tribunal is constituted by an Act of the legislature for adjudicating any particular matter, the power of the constitutional courts under Article 226/227 or 136 is not ousted even if the Act makes the decision of the tribunal final.

H 6. The preliminary question that we have to decide is

whether an advance ruling pronounced by the Authority can be challenged by the applicant or by the Commissioner or any income-tax authority subordinate to him under Article 226/227 of the Constitution before the High Court or under Article 136 of the Constitution before this Court. 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, this Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. Hence, we have to decide whether the Authority, if not a court, is a tribunal within the meaning of expression in Articles 136 and 227 of the Constitution and whether the Authority has a duty to act judicially and is amenable to writs of Certiorari and Prohibition under Article 226 of the Constitution.

7. The meaning of the expression "tribunal" in Article 136 and the expression "tribunals" in Article 227 of the Constitution has been explained by Hidayatullah, J., in *Harinagar Sugar Mills v. Shyam Sunder* [AIR 1961 S.C. 1669] in paragraph 32, relevant portion of which is quoted herein below:

> "With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some

A administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of 'Courts' in Art. 136, 227 or 228 or in Art. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both
B the expressions in Arts. 136 and 227.

By "Courts" is meant Courts of Civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to
C decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before
D the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established....."

E Thus, the test for determining 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 law and this test has been reiterated by this Court in *Jaswant Sugar Mills Ltd. v. Lakshmi*
F *Chand & Ors.* [AIR 1963 SC 677], *Associated Cement Companies Ltd. v. P.N. Sharma & Anr.* [AIR 1965 SC 1595] and in the recent decision of the Constitution Bench in *Union of India v. R. Gandhi, President, Madras Bar Association* [(2010) 11 SCC 1].

G 8. We may now examine the provisions of Chapter XIX B of the Act on Advance Ruling to find out whether the Authority pronounces upon the rights or liabilities arising out of the Act. Section 245N(a) of Chapter XIX B which defines "advance rulings" is extracted hereinbelow:

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"**245N.** In this Chapter, unless the context otherwise requires,-

(a) "advance ruling" means-

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any question of law or of fact specified in the application;

(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application :

[Provided that where an advance ruling has been pronounced, before the date on which the Finance Act, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S;]"

A plain reading of the very definition of advance ruling in Section 245N (a) would show that the Authority is called upon to make a determination in relation to a transaction which has

A been undertaken or is proposed to be undertaken by a non-resident applicant or in relation to the tax liability of a non-resident arising out of such transaction which has been undertaken or proposed to be undertaken by a resident applicant with such non-resident and such determination may B be on any question of law or fact specified in the application. Further, the Authority may make a determination or decision in respect of a issue relating to the computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision may C include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application. Thus, the Authority may determine not only a transaction but also the tax liability arising out of a transaction and such determination may include a determination of issue D of fact or issue of law. Moreover, the Authority may determine the quantum of income and such determination may include a determination on a issue of fact or issue of law.

9. We also find that the determination of the Authority is not just advisory but binding. Section 245S in Chapter XIX-B E is quoted hereunder:

> **"245S.** (1) The advance ruling pronounced by the Authority under section 245R shall be binding only-
>
> F (a) on the applicant who had sought it;
>
> (b) in respect of the transaction in relation to which the ruling had been sought; and
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> (c) on the Commissioner, and the income-tax G authorities subordinate to him, in respect of the applicant and the said transaction.
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> (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been H pronounced."

The binding effect of advance ruling as provided in Section 245S has been dealt with by the Authority (Chairman and two Members) in *Cyril Eugene Pereira, In re.* [1999] 239 ITR 650] and at page 672 of the ITR, the Authority held: A

> "Thus, sub-section (2) of section 245S has limited the binding nature of the ruling to the case of the applicant in respect of the transaction in relation to which the advance ruling is sought and to the Commissioner and authorities subordinate to him only in respect of the applicant and the transaction involved. This is not to say that a principle of law laid down in a case will not be followed in future. The Act has made the ruling binding in the case of one transaction only and the parties involved in that case in respect of that transaction. For other transactions and for other parties, the ruling will be of persuasive nature." B C D

The Authority, thus, held that the advance ruling of the Authority is binding in the case of one transaction only and the parties involved in respect of that transaction and for other parties, the ruling will be of persuasive nature. The Authority, however, has clarified that this is not to say that a principle of law laid down in a case will not be followed in future. This decision of the Authority in Cyril Eugene Pereira, In re. (supra) has been taken note of by this Court in *Union of India & Anr. v. Azadi Bachao Andolan & Anr.* [2003] 263 ITR 706 at 742] to hold that the advance ruling of the Authority is binding on the applicant, in respect of the transaction in relation to which the ruling had been sought and on the Commissioner and the income-tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself that this does not mean that a principle of law laid down in a case will not be followed in future. E F G

10. As Section 245S expressly makes the Advance Ruling binding on the applicant, in respect of the transaction and on the Commissioner and the income tax authorities subordinate to him, the Authority is a body acting in judicial capacity. H.M. H

A Seervai in his book "Constitutional Law of India" (Forth Edition) while discussing the tests for identifying judicial functions in paragraph 16.99 quotes the following passage from Prof. de Smiths Judicial Review on page 1502:

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> "An authority acts in a judicial capacity when, after investigation and deliberation, it performs an act or makes a decision that is binding and collusive and imposes obligation upon or affects the rights of individuals."

We have, therefore, no doubt in our mind that the Authority is a C 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 Articles 136 and 227 of the Constitution.

11. The fact that sub-section (1) of Section 245S makes D the advance ruling pronounced by the Authority binding on the applicant, in respect of the transaction and on the Commissioner and the income-tax authorities subordinate to him in respect of the applicant and the transaction would not affect the jurisdiction of either this Court under Article 136 of the Constitution or of the High Courts under Articles 226 and E 227 of the Constitution to entertain a challenge to the advance ruling pronounced by the Authority. The reason for this view is that Articles 136, 226 and 227 of the Constitution are constitutional provisions vesting jurisdiction on this Court and the High Courts and a provision of an Act of legislature making F the decision of the Authority final or binding could not come in the way of this Court or the High Courts to exercise jurisdiction vested under the Constitution. We may cite some authorities in support of this view. In *Kihoto Hollohan v. Zachillhu and Others* (supra), the question raised before this Court was G whether Paragraph 6(1) of Schedule-X of the Constitution providing that the decision of the Speaker or the Chairman on the question of disqualification of a member of the Legislature will be final would exclude judicial review under Articles 136, 226 and 227 of the Constitution and this Court held that the

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finality clause in Paragraph 6 of the Schedule-X of the Constitution does not completely exclude the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution, though it may limit the scope of this jurisdiction. In *Jyotendrasinhji v. S.I. Tripathi and Others* (supra), this Court held that the provision in Section 245-I of the Income Tax Act, 1961, declaring that every order of settlement passed under sub-section (4) of Section 245D shall be conclusive as to the matters stated therein would not bar the jurisdiction of the High Court under Article 226 of the Constitution or of this Court under Article 136 of the Constitution. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority.

12. In a recent advance ruling in *Groupe Industrial Marcel Dassault, In re* [2012] 340 ITR 353 (AAR)], the Authority has, however, observed:

> "..... But permitting a challenge in the High Court would become counter productive since writ petitions are likely to be pending in High Courts for years and in the case of some High Courts, even in Letters Patent Appeals and then again in the Supreme Court. It appears to be appropriate to point out that considering the object of giving an advance ruling expeditiously, it would be consistent with the object sought to be achieved, if the

A Supreme Court were to entertain an application for Special Leave to appeal directly from a ruling of this Authority, preliminary or final, and render a decision thereon rather than leaving the parties to approach the High Courts for such a challenge. ..."

B We have considered the aforesaid observations of the Authority but we do not think that we can hold that an advance ruling of the Authority can only be challenged under Article 136 of the Constitution before this Court and not under Articles 226 and/or 227 of the Constitution before the High Court. In *L. Chandra Kumar v. Union of India and Others* (supra), a Constitution Bench of this Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. Therefore, to hold that an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible.

G 13. The only other question which we have to consider is whether we should entertain this petition under Article 136 of the Constitution or ask the petitioner to approach the High Court under Articles 226 and/or 227 of the Constitution. Article 136 of the Constitution itself states that this Court may, "in its

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discretion", grant special leave to appeal from any order passed or made by any court or tribunal in the territory of India. The words "in its discretion" in Article 136 of the Constitution makes the exercise of the power of this Court in Article 136 discretionary. Hence, even if good grounds are made out in a Special Leave Petition under Article 136 for challenge to an advance ruling given by the Authority, this Court may still, in its discretion, refuse to grant special leave on the ground that the challenge to the advance ruling of the authority can also be made to the High Court under Articles 226 and/or 227 of the Constitution on the self same grounds. In fact, in *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* [AIR 1970 SC 1520] it has been observed that this Court does not encourage an aggrieved party to appeal directly to this Court against the order of a Tribunal exercising judicial functions unless it appears to the Court that a question of principle of great importance arises. Unless, therefore, a Special Leave Petition raises substantial questions of general importance or a similar question is already pending before this Court for decision, this Court does not entertain a Special Leave Petition directly against an order of the tribunal.

14. In this Special Leave Petition, we do not find that a substantial question of general importance arises nor is it shown that a similar question is already pending before this Court for which the petitioner should be permitted to approach this Court directly against the advance ruling of the Authority. We accordingly dispose of this Special Leave Petition granting liberty to the petitioner to move the appropriate High Court under Article 226 and/or 227 of the Constitution. We request the concerned High Court to ensure that the Writ Petition, if filed, is heard by the Division Bench hearing income-tax matters and we request the Division Bench to hear and dispose of the matter as expeditiously as possible.

A **SPECIAL LEAVE PETITION (C) No. 3318 of 2011, SPECIAL LEAVE PETITION (C) No. 13760 of 2011, CIVIL APPEAL No. 2996 of 20O8, CIVIL APPEAL No. 5839 of 2008, CIVIL APPEAL No. 7035 of 2011, CIVIL APPEAL No. 6987 of 2010, CIVIL APPEAL No. 10064 of 2011, AND**
B **CIVIL APPEAL No. 11327 of 2011,**

Delay condoned in Special Leave Petitions.

These Special Leave Petitions and Civil Appeals are disposed of in terms of our order passed in Special Leave
C Petition (C) No.31543 of 2011.

B.B.B. Matters disposed of.