

Introduction

The Supreme Court of India is the Highest Court in the Republic of India. It was inaugurated on January 28, 1950 by Late Shri M.C. Setalvad, first Attorney General for India. The Court initially functioned in the Chamber of Princes, a part of Parliament House, where Federal Court used to sit from 1937 to 1950. It shifted to its own building and started functioning there on 4th August, 1958.

What are the landmark Judgments?

Landmark Judgments are those that set a precedent in law, or determine a major new legal principle or judicial concept or affects the interpretation of the existing law in a significant manner.

Great judgment v. Landmark judgment

A great judgment is one that restores the constitutional values of a polity from the waywardness into which it may have fallen, while a landmark judgment is one which opens up new directions in our constitutional thinking and, in the process, adds new dimensions to what are regarded as established constitutional principles. If “great” restores the centrality of constitutional values, “landmark” revitalises them. – Peter Ronald deSouza, Professor at the Centre for the Study of Developing Societies, Delhi

Landmark Judgments

“..... When histories of nations are written and critiqued, there are judicial decisions at the forefront of liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been.”—[D.Y. Chandrachud J. in *Justice K.S. Puttaswamy (retd.) v. Union of India and Ors.*, (2017) 10 SCC 1]

In India, there is a multi-layered system of resolving any dispute in tax-related matters. After assessment, the assessee has the option of approaching the Commissioner of Income-tax (Appeals) (CIT-A) and thereafter, the Department or assessee has the option of approaching the Income-tax Appellate Tribunals (ITATs), the High Courts (HCs) and finally the Supreme Court of India (SC) in case of disputes in Direct Taxes. As per calculations in Economic Survey 2017-18, Department’s appeals constitute nearly 85 per cent of the total number of appeals filed in the case of direct taxes. Of the total number of direct tax cases pending by the quarter ending March 2017, the Department initiated close to 88 per cent of the litigation at ITATs and the Supreme Court and 83 per cent of the litigation pending at High Courts. However, the department loses 73 per cent of its cases in Supreme Court and ITATs and 87 per cent in High Courts.

Supreme Court set up

Supreme Court consists of the Chief Justice of India and not more than 34 Judges (including the Chief Justice). Supreme Court Judges are appointed by the President and they hold office until they attain the age of 65 years.

Sitting of the court

The Courts ordinarily sit from 10.30 A.M. to 4 P.M. on Tuesday, Wednesday and Thursday and from 10.30 A.M. till the work is over on Monday and Friday. The Courts do not sit on Saturdays and holidays, except to hear the matters of urgent nature. For each month, a Vacation Officer is appointed by the Registry and his name, address and telephone Nos. are circulated to the advocates. If hearing of matter is sought on a Saturday or a holiday or after Court hours on a working day, the applicant has to file an affidavit of urgency before the Vacation Officer, who then takes directions on the request for urgent hearing and informs the applicant.

Minimum qualification to be appointed as the Judge of Supreme Court

- (1) He should be citizen of India.
- (2) (a) He has been a judge of a High Court for at least 5 years, or
(b) He has been an advocate of a High Court for at least 10 years in succession, or
(c) He is a distinguished jurist in the opinion of the President.

Binding force of a Supreme Court Judgment

Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts in India.

As provided in Article 141 of the Constitution, the law declared by Supreme Court is binding on all courts within the territory of India. Under Article 141 of the Constitution, 'The law declared by the Supreme Court shall be binding on all courts within the territory of India'. Once there is a pronouncement of the highest Court of the land, the same is binding on all courts, tribunals and all authorities in view of this article.—[*CIT v. Vallabhdas* (2002) 253 ITR 543 (Guj.)].

Needless to say, a judgment of Supreme Court is binding on all High Courts. But it is the principle laid down in the judgment, and not every word appearing therein, that becomes the law of the land. Further, article 141 will not be attracted if law is not declared or stated vocally to support the conclusion reached for deciding the lis; because a conclusion may be on facts, it may not and does not necessarily involve consideration of law.

As mandated by Article 144 of the Constitution, all authorities, civil & judicial, in the territory of India, are required to act in aid of the Supreme Court. In order to give administrative freedom to the Court, Article 146 gives exclusive power to Chief Justice of India in the matter of appointment of officers and servants of the Court.

If the Supreme Court has construed the meaning of a section, then any decision to the contrary given by any other authority must be held to be erroneous and such error must be treated as an error apparent on the record.

When the Supreme Court declares the law and holds either a particular levy to be valid or invalid, the law laid down by the Supreme Court in that judgment would bind not only those parties who were before the court but also others in respect of whom appeal had not been filed—[*U.P Pollution Control Board v. Kanoria Industries Ltd. (2003) 259 ITR 321 (SC)*].

In case of conflict between the decisions of the Supreme Court, the decision of the larger bench should be followed. Between two decisions of benches of equal strength of the Supreme Court, the later decision should be followed, provided the earlier decision is considered.

Appeal before the Supreme Court against the order of the High Court

There are two ways to approach the Supreme Court for Direct Tax cases. The first route is to file the appeal, which can be filed only before the Supreme Court if the High Court has certified the case as fit for appeal before the Supreme Court (Income-tax Act, section 261). The second route is under Article 136 of the Constitution (there is no statutory right to an appeal before the Supreme Court). However, either party can file a Special Leave Petition (SLP) within 90 days of the date on which the order sought to be appealed against is communicated to the taxpayer or to the revenue. Fees payable for filing an SLP are specified in the Supreme Court Rules.

The Supreme Court, on hearing the parties, can either grant leave or refuse to hear the case on the merits and dismiss the case immediately. If leave is granted, a date will be fixed for a final hearing, depending on the Court's timetable. The petitioner and the respondent can submit written and oral submissions as well as evidence before the final decision is made. The time limit for a decision depends on the capacity of the Supreme Court.

When appeal lies to the Supreme Court – Appeal to Supreme Court [Section 261]

The assessee or the Principal Commissioner or Commissioner may prefer an appeal to the Supreme Court from any Judgment of the High Court. Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies—

- (i) that the case involves a substantial question of law of general importance; and
- (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Special Leave Petitions in India (SLP)

Special Leave Petitions in India (SLP) holds a prime place in the Judiciary of India, and has been provided as a “residual power” in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved, or gross injustice has been made.

Generally what has been observed that against an order of the High Court, a Special Leave Petition (‘SLP’) is filed under Article 136 of the Constitution of India instead of an appeal under section 261 of the Income-tax Act read with Article 133 of the Constitution of India. An SLP under Article 136 is required to be filed where there are cases, where justice might require the interference of the Hon’ble Supreme Court for deciding the orders of any court or tribunal within the territory of India. Such residuary powers outside the ordinary law are provided to the Hon’ble Supreme Court under Article 136 of the Constitution of India.

SLP under Article 132 of the Constitution of India

Special Leave Petition is filed under Article 132 of the Constitution of India which contemplates for an appeal to the Supreme Court of India from a judgment, decree or final order of a High Court, whether in civil, criminal or any other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution of India. On the basis of such certificate the party can approach the Supreme Court of India and engage a lawyer for SLP in Supreme Court of India and file an SLP in the Supreme Court of India.

Text of Article 132 of Constitution of India***132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases***

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Omitted [by s. 17, the Constitution (Forty-fourth Amendment) Act, 1978 (with effect from 01.08.1979)].

(3) Where such a certificate is given to any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation : For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Under Article 136 of the Constitution of India any person aggrieved by any Judgment, decree, determination or order in any cause or matter passed or made by any Court or Tribunal in the territory of India may appeal to the Supreme Court of India. Accordingly, a person aggrieved by any order or judgment of

High Court or of Tribunal may appeal to the Supreme Court by filing Special Leave Petition.

This is special power bestowed upon the Supreme Court of India which is the Apex Court of the country, to grant leave in any judgment in case any substantial constitutional question of law is involved, or gross injustice has been done.

Special Leave Petition or SLP hold a prime place in the Indian judicial system. It provides the aggrieved party a special permission to be heard in Apex court in appeal against judgment or order of any Court and tribunal in the territory of India.

Text of Article 136 of Constitution of India

136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme 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.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Scope of Article 136 of Constitution of India

In the case of *N. Suriyakala v. A Mohandoss & Others*, the Hon'ble Supreme Court laid down that,—

The use of the words “in its discretion” in Article 136 clearly indicates that Article 136 does not confer a right of appeal upon any party but merely vests a discretion in the Supreme Court to interfere in exceptional cases. Under Article 136 it was not bound to set aside an order even if it were not in conformity with law, since the power under Article 136 was discretionary.—[N. Suriyakala v. A Mohandoss & Others (2007) 9 SCC 196]

The Hon'ble Supreme Court in the case of *Ashok Nagar Welfare Association v. R.K. Sharma AIR 2002 SC 335* considered the issue of filing of SLP against all kinds of orders without realizing the scope of Article 136 and held that, Even in cases where special leave is granted, the discretionary power vested in the Court continues to remain with the Court even at the stage when the appeal comes up for hearing. Nowadays it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realizing the scope of Article 136. Hence we feel it incumbent on us to reiterate that Article 136 was never meant to be an ordinary forum of appeal at all like section 96 or even section 100, CPC. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice had been done. If the Supreme Court entertains all and sundry

kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute.

In the case of *Pritam Singh v. the State*, the Hon'ble Supreme Court explained the scope of Article 136 as under,—

“The points to be noted in regard to this article are firstly, that it is very general and is not confined merely to criminal cases, as is evident from the words “appeal from any judgment, decree, sentence or order” which occur therein and which obviously cover a wide range of matters; secondly, that the words used in this article are “in any cause or matter,” while those used in articles 132 to 134 are “civil, criminal or other proceeding,” and thirdly, that while in articles 132 to 134 reference is made to appeals from the High Courts, under this article, an appeal will lie from any court or tribunal in the territory of India. On a careful examination of article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist..... Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”—[Pritam Singh v. The State AIR 1950 169 (SC)]

Acceptance or Rejection of Petition for Special Leave to Appeal

The Supreme Court elaborately dealt with the effect of acceptance or rejection of a special leave petition in *Kunhayammed v. State of Kerala (2000) 245 ITR 360 (SC)* and has held that when there is a refusal of special leave to appeal in non-speaking order, i.e., an order that does not assign reasons for the dismissal of the special leave petition, it does not amount to a declaration of the law as laid down by the Supreme Court, since there is no law that has been declared. On the other hand, if the refusal is in the form of a speaking order, it then becomes a declaration of law within the meaning of article 141 of the Constitution binding not only on the parties but also on all judicial fora in the country.

In either case, the doctrine of merger, which would effectuate the merger of the decision of the lower court with the Supreme Court order, is not attracted. But once special leave to appeal from an order has been granted by the Supreme Court, the order passed thereafter by the Supreme Court would be an appellate order and would then attract the doctrine of merger; whether the order reverses,

modifies or affirms the decision of the lower court, and whether it is a speaking or non-speaking order.

Thus, the mere fact that the Supreme Court refuses to grant special leave to appeal against a judgment does not necessarily imply that it accepts that judgment as correct, though in the circumstances of a case such an inference may be permissible. Conversely, the mere filing of a special leave petition or grant of leave to appeal or pendency of appeal against the High Court's judgment does not denude that judgment of its binding effect.—[*Kanga, Palkhivala and Vyas—VOL.1, Ninth Edition Page:36-37-38*].

Dismissal of an SLP in limine

An appeal is filed before the Hon'ble Supreme Court under Article 133 of the Constitution of India. Where an appeal is filed and the said appeal is either dismissed in limine, it will be considered as the issue in the appeal is decided by the Hon'ble Supreme Court and the order of the High Court or the tribunal merges into the said appeal. The doctrine of merger applies.

Text of Article 133 of Constitution of India

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A:

- (a) that the case involves a substantial question of law of general importance; and*
- (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.*

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

The Supreme Court in the case of *State of Orissa and Another v. Dhirendra Sundar Das and Others* has clarified this position with the following observations at Para 9.27:

“9.27 It is a well settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees' Welfare Association v. Union of India & Anr. and State of Punjab v. Davinder Pal Singh Bhullar, 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.”—[*State of Orissa and Another v. Dhirendra Sundar Das And Others* (2019) 6 SCC 270 (SC)]

In the case of *V. M. Salgaokar & Bros. (P) Ltd. v. CIT*, the Hon'ble Supreme Court laid down that—

“Different considerations apply when a special leave petition under article 136 of the Constitution is simply dismissed by saying ‘dismissed’ and an appeal provided under article 133 is dismissed also with the words ‘the appeal is dismissed’. In the former case, it has been laid down by the Supreme Court that when special leave petition is dismissed, it does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the Court means is that it does not consider it to be a fit case for exercise of its jurisdiction under article 136. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upheld the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of article 133. This doctrine of merger does not apply in the case of dismissal of special leave petition under article 136. When appeal is dismissed, the order of the High Court is merged with that of the Supreme Court.”—[*V. M. Salgaokar & Bros. (P) Ltd. v. CIT* (2000) 243 ITR 383 (SC)]

Reliance on Decisions

A precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it; and a decision on a question that has not been argued cannot be treated as a precedent. Judgments must be read as whole and observations in judgments should be considered in the context in which they are made and in the light of questions that were before the court. In *CIT v. Sun Engineering Works (P) Ltd.* (1992) 198 ITR 297 (SC), the Supreme Court observed:

“It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision.”

Ratio Decidendi, Obiter Dicta, and Casual Observations

Two questions may arise before the court for its determination. The court may determine both, although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for determination of the case would be the ratio; the opinion of the court on the question which was not necessary to decide the case would be only *obiter dictum*. The difference between *obiter dictum* and ‘casual observations’ of the Supreme Court is that casual

observation are made on points which do not arise for the determination of the court at all. Thus, it would be incorrect to say that every opinion of the Supreme Court would be binding upon the High Court in India; the only opinion which would be binding would be an opinion expressed on a question that arose for the determination of the Supreme Court, even though ultimately it might be found that the particular question was not necessary for the decision of the case. The *obiter dictum* of the Supreme Court should be followed by the High Courts; but where they are in conflict with the ratio of the same or another decision of the Supreme Court, the ratio should be followed in preference to the *obiter dictum*.