

ITEM NO.45

COURT NO.5

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 (Civil) No(s).31545/2008

**(From the judgment and order dated 10/07/2008 in ITA No.87/2004
of the HIGH COURT OF KARNATAKA AT BANGALORE)**

M/S FIFTH AVENUE, BANGALORE

Petitioner(s)

VERSUS

COMMR.OF INCOME TAX & ANR.

Respondent(s)

(With prayer for interim relief)

Date: 09/04/2009 This Petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM**

For Petitioner(s)

**Mr. Soli J. Sorabjee, Sr.Adv.
Mr. Preetesh Kapur, Adv.
Ms. Radha Rangaswamy, Adv.
Mr. Ashok Kulkarni, Adv.**

For Respondent(s)

**Mr. V. Shekhar, Sr.Adv.
Mr. Arijit Prasad, Adv.
Ms. Vismai Rao, Adv.
Mr. B.K. Prasad, Adv.**

**UPON hearing counsel the Court made the following
O R D E R**

Leave granted.

The appeal is disposed of with no order as to costs.

**(S. Thapar)
PS to Registrar**

**(Madhu Saxena)
Court Master**

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2437 OF 2009
(Arising out of SLP(C) No.31545 of 2008)

M/S FIFTH AVENUE

...APPELLANT (S)

VERSUS

COMMR. OF INCOME TAX & ANR.

...RESPONDENT(S)

ORDER

Leave granted.

In this case the grievance made by the appellant (assessee) is that although the High Court had specifically formulated the following question, quoted hereinbelow, it has failed to answer the said question which reads as follows:

“Whether the amount allegedly paid by the purchasers on different dates to the managing partners of the Firm could be brought to tax in the hands of the appellant-Firm.”

We find merit in this contention. However, we find from the impugned judgment that there was another question, besides the question quoted hereinabove, which has been remanded by the High Court to the A.O. [See: para ‘8’ of the impugned judgment]. Therefore, in our opinion the above-quoted question is also being remanded to the A.O. for fresh consideration in accordance with law. In short, the above question, in addition to the question remanded by the High Court, is also being remitted to the A.O.

Before concluding, one aspect needs to be highlighted. As can be seen from the impugned judgment, vide para ‘7’, the entire unaccounted money stood taxed by the Department in the assessment year 1993-94 which, according to the impugned judgment, was erroneous, therefore, it has been held by the High Court that the matter needs to be

remitted to the A.O. to ascertain whether Rs.2,32,28,173/- was received by the partners of the appellant-Firm during the assessment year 1993-94 or not and based on such finding the High Court directed the A.O. to complete the assessment. In this case there was a search during which certain incriminating material was found. Therefore, it has been rightly held by the High Court that it is for the appellant-Firm and its partners to explain and produce relevant documents before the A.O. to show as to when and how the aforestated amount was received by them. The High Court further rightly held that if the partners of the appellant-Firm are unable to produce any material evidence, then it would be open to the A.O. to complete the assessment treating the above amount to have been received by the partners during the assessment year 1993-94 only. Lastly, the High Court specifically held that in view of the above direction, appellant (assessee) shall not raise any question of limitation.

We have carefully gone through para '7' of the impugned judgment. We find no infirmity in para '7'. Therefore, it would not be open for the appellant to raise the question of limitation in this case before the A.O.



