2026 INSC 771

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3334-3336 OF 2012

THE DIRECTOR OF INCOME TAX,
(INTERNATIONAL TAXATION). ... APPELLANT(S)

VERSUS

M/S STAR CRUISES (INDIA) P. LTD. ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. The Civil Appeals arise from the Judgment and Order dated 01.07.2011, in Income Tax Appeal Nos. 485, 486 and 683 of 2010 (for short, 'impugned Order') of the High Court of Judicature at Bombay. The Director of Income Tax, International Taxation (for short, 'the Revenue') is the Appellant.

2. M/s Star Cruises (India) Pvt. Limited is the Assessee/Respondent. The Civil Appeals relate to the assessment years 2006-07, 2007-08, and 2008-09.

3. The Superstar Libra Ltd. (for short, 'SLL'), a non-resident entity, operated a cruise known as "Superstar Libra" in India. The Assessee, the Agent of SLL, was responsible for conducting the cruise and collecting revenue from the sale of cruise packages and shore excursions in India.

4. The impugned Order has considered the claim of the Assessee under Section 44B of the Income Tax Act, 1961 (for short, 'the Act') for withholding tax determined under Section 195 of the Act on the remittances by the Assessee in favour of SLL. The Assessee stated that income accruing in favour of SLL is computed by applying Section 44B of the Act and that the estimated income was 7.5% of the cruise fare collected by the Assessee. The Assessee further claimed consideration for granting a certificate for TDS under Section 195 of the Act, at the rate of 7.5% of the estimated income under Section 44B of the Act. The Assessee claimed that, as an Agent, it received receipts for providing carriage of passengers operated by SLL, and that the estimated income was 7.5% of the cruise fare collected by the Assessee.

5. The Assessing Officer, *vide* order dated 30.03.2007, held that Section 44B of the Act is applicable in cases of carriage of goods, passengers, etc., and, in the view of the Assessing Officer, the term "carrying" means taking or transporting from one place to another or from one port to another. SLL conducted cruise services originating from and terminating at Mumbai Port, i.e., a round trip. During the round trip, SLL extended hospitality and provided entertainment. Therefore, the activity of SLL falls under entertainment and hospitality and does not include carriage of passengers/goods within the meaning of section 44B of the Act. Consequent to such view, the Assessing Officer estimated deemed income at 25% of the cruise fare collected for and on behalf of SLL, not at 7.5% as claimed by the Assessee.

6. The Assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) [for short, 'CIT(A)'], Mumbai. By Order dated

15.06.2007, the CIT(A) allowed the Appeal and set aside the Assessment Order dated 30.03.2007.

7. The Appellate Authority appreciated all the circumstances of the case under Section 44B of the Act and held that the deemed income of SLL was estimated at 7.5% of the receipts received from the cruise fare.

8. The Revenue carried the matter in appeal before the Income Tax Appellate Tribunal (for short, 'ITAT'), and the Tribunal, by the Order dated 01.07.2009, dismissed the Appeal. The Tribunal's finding of fact is summarised as follows:-

A. While rejecting the Assessing Officer's interpretation of the term 'carriage', it affirmed that a round-trip voyage constitutes two separate acts of carriage, i.e., from station A to station B and back to station A. Further, the Assessee also offered one-way cruises, and passengers booking round-trip cruises are entitled to disembark at intermediate ports without being compelled to return to Mumbai.

B. Booking slips establish that the primary fees collected from passengers were for cabin and transport fares. Any on-board entertainment, whether included or paid separately, was incidental to the main business of operating ships.

C. CBDT Circulars No. 763 and 169 dated 18.02.1996 and 23.06.1975, respectively, clarify that carriage payments include handling charges and that Section 44B of the Act was designed to simplify the computation of taxable profits for foreign shipping enterprises. Since SLL is a non-resident entity engaged in the business of operating ships, it fulfils the essential conditions under the said section.

D. It directed that SLL's income be assessed at the statutory presumptive rate of 7.5% of gross cruise fare receipts for tax deduction under Section 195 of the Act rather than 25% of income estimated by the Assessing Officer.

9. The Revenue carried the matter in appeal before the High Court, as noted above, and through the impugned Order, the Appeal(s) have been dismissed. Hence, the Civil Appeals.

10. Leave has been granted in the matter(s) on the following two questions, namely:-

> *"(i) Whether on the facts and circumstances of the case and in law, the Hon'ble High Court was justified in upholding the Hon'ble ITAT'S decision that assessee is engaged in the business of operation of Ships and is entitled to be assessed under Section 44B of the Income Tax Act?*
> *(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble High Court was justified in upholding the Hon'ble ITAT'S decision without appreciating that the fact of the case that business activity of assessee was primarily that of providing hospitality and entertainment on board the cruise ship and not that of mere transportation of passengers?"*

11. We have heard Mr. Raghavendra P Shankar, learned Additional Solicitor General, assisted by Advocate Pallavi Mishra, for the Appellant and Advocate Anand Varma, for the Respondent.

12. The Revenue argues that the impugned Order has failed to give the meaning available to the word 'carriage' under Section 44B of the Act. It is argued that a round trip with amenities is not a simple carriage of passengers or goods for the purpose of estimated income under Section 44B of the Act.

The dominant purpose of SLL's activity is more in the nature of conducting packages/excursions with tourists, rather than the carriage of passengers from one port to another, and the transaction is an excursion, not the carriage of passengers/goods. Even if the Assessee satisfies the twin conditions of Section 44B, the final estimation at 7.5% depends on the activity being the carriage of passengers/goods. The findings of fact are untenable and warrant interference. Therefore, the estimated income must be assessed at 25% of the Assessee's receipts, not at 7.5%.

13. For the Assessee, it is argued that the applicability of Section 44B of the Act depends on the twin test laid down in that Section. As per the concurrent findings of fact recorded in the three Orders, both requirements are satisfied by the Assessee. The inference drawn by the Revenue on the application of the word 'carriage' in the circumstances of the case is untenable and *ex facie* illegal. The Assessing Officer has restricted the meaning of the word 'carriage' by observing that, to come within the meaning of carriage, the carriage must necessarily be from Port A to Port B. The CIT(A) has rejected this limited interpretation of the word 'carriage'. The Assessee has established that the primary grounds for attracting Section 44B of the Act are complied with, and that making an ancillary purpose the dominant purpose, particularly with a restricted meaning of the word 'carriage', is erroneous. There is no gainsaying that a round trip of passengers would go beyond the normal meaning of carriage of passengers and goods. The findings of fact are lawful and not perverse, and only available findings have been recorded. The scope of the Civil Appeals does not permit interference with concurrent findings of fact on the accepted nature of SLL's activity.

14. We have taken note of the arguments and perused the record. In the Civil Appeals, we are not defining the meaning of the word 'carriage', but we are examining its application to the facts of the case. To sum up, we may note with disapproval the construction placed by the Assessing Officer on SLL's activity. The Assessing Officer insists that, to attract the meaning of the word 'carriage', the movement should be from place 'A' to place 'B'.

15. We find it difficult to confine the meaning of the word 'carriage' as attributed by the Assessing Officer. The Appellate Authority and the Tribunal, being competent authorities to examine the facts in issue, as noted supra, have held that the activity established by SLL does not fall outside the expression of 'carriage' as per Section 44B of the Act. In the facts and circumstances of this case, SLL, being a foreign entity, was providing cruise services in India through the Assessee. The finding recorded is that the possibility of passengers de-boarding at intermediate ports was not taken into account by the Assessing Officer. On a voyage, the providing of ancillary services does not take away from the meaning of 'carriage' as per Section 44B of the Act. The meaning adopted by the Assessing Officer is restrictive in the facts and circumstances of this case. The illegality was factually corrected by the impugned Orders.

16. We do not wish to reiterate the same reasoning, but are satisfied that, in the facts and circumstances of the case, the view taken in respect of the subject assessment years, namely that Section 44B of the Act is attracted to the estimated income of SLL, does not warrant interference.

17. The Civil Appeals fail and are accordingly dismissed.

18. Pending application(s), if any, shall stand disposed of.

……………………………J.
[S.V.N. BHATTI]

……………………………J.
[N.V. ANJARIA]

New Delhi;
July 30, 2026.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.   OF 2026
@ SPECIAL LEAVE PETITION (C) NO. 1440 OF 2016

THE DIRECTOR OF INCOME TAX (IT)-I **...APPELLANT(S)**

VERSUS

SUPERSTAR LIBRA LIMITED **... RESPONDENT(S)**

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave Granted.

2. The present Civil Appeal is a companion appeal to Civil Appeal Nos. 3334-3336 of 2012 between the same parties but for a different assessment year.

3. The issue is substantially similar to that of companion Civil Appeals, and, by adopting the same view, the present Civil Appeal is dismissed.

4. Pending application(s), if any, shall stand disposed of.

……………………………J.
[S.V.N. BHATTI]

……………………………J.
[N.V. ANJARIA]

New Delhi;
July 30, 2026.