



\$~67, 70, 72, 74 to 76

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision:-22<sup>nd</sup> January, 2026.*

+ ITA 38/2026

PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None.

70

+ ITA 41/2026

PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None.

72

+ ITA 43/2026

PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None.

74

+ ITA 34/2026, CM APPL. 4177/2026 CM APPL. 4178/2026

PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant



2026:DHC:585-DB



Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None

75

+

ITA 36/2026 and CM APPL. 4253/2026 CM APPL. 4254/2026  
PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None.

76

+

ITA 37/2026 and CM APPL. 4256/2026 CM APPL. 4257/2026  
PR. COMMISSIONER OF INCOME TAX, CENTRAL-1,  
DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr.  
Ashvini Kr. JSC.

versus

SANJAY JAIN

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH MEHTA**

**HON'BLE MR. JUSTICE VINOD KUMAR**

### **J U D G M E N T**

**DINESH MEHTA, J. (Oral)**

**CM APPL. 4368/2026(exemption) in ITA 38/2026**

**CM APPL. 4392/2026(exemption) in ITA 41/2026**

**CM APPL. 4501/2026(exemption) in ITA 43/2026**

**CM APPL. 4177/2026(exemption) in ITA 34/2026**

**CM APPL. 4253/2026(exemption) in ITA 36/2026**



**CM APPL. 4256/2026(exemption) in ITA 37/2026**

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

**CM APPL. 4369/2026(delay in filing the appeal) in ITA 38/2026**

**CM APPL. 4393/2026(delay in filing the appeal) in ITA 41/2026**

**CM APPL. 4502/2026(delay in filing the appeal) in ITA 43/2026**

**CM APPL. 4178/2026(delay in filing the appeal) in ITA 34/2026**

**CM APPL. 4254/2026(delay in filing the appeal) in ITA 36/2026**

**CM APPL. 4257/2026(delay in filing the appeal) in ITA 37/2026**

3. The instant applications have been filed seeking condonation of delay of 36 days in filing the appeal(s).
4. For the reasons stated in the applications, the delay of 36 days in filing the appeal(s) is condoned.
5. All the above applications stand allowed.

**ITA 38/2026, ITA 41/2026, ITA 43/2026, ITA 34/2026, ITA 36/2026, ITA 37/2026**

6. By way of the instant appeals, the revenue has assailed the common order passed by the Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*) for AY 2011-12 to 2017-18, whereby the assessment orders have been held barred by limitation.

7. Before adverting to question involved in these appeals, it will be apposite to give factual backdrop in brief, which unfolds as under :-

7.1 A search was conducted at the premises of an entity known as AMQ group on 27.02.2017. On the basis of material found during said search, the proceedings were taken against the respondent as well.

7.2 The prescribed period of limitation for passing the assessment order (as the case related to search) was 31.12.2018; however, before



such date, on 04.12.2018 the AO made a reference to Foreign Tax and Tax Research Division (*hereinafter referred to as "FT&TR"*).

7.3 It is not in dispute that the authorities at Hong Kong never provided the desired information to the Assessing Officer (AO).

7.4 Consequent to reference made to FT&TR, the limitation for passing the assessment order got extended up to 31.12.2019 by virtue of clause (ix) of the explanation to Section 153(B) of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*).

7.5 The Commissioner of Income Tax (Appeals) affirmed the addition made by the AO by way of his order dated 30.01.2024.

8. When the matter was taken to the Tribunal in an appeal filed by the assessee, the Tribunal relied upon the judgment of this Court dated 13.05.2025 rendered in the case of ***Principal Commissioner of Income Tax-Central-1 v. Smt. Sneh Lata Sawhney and Ors.*** 2025:DHC:3617-DB and allowed the appeal filed by the respondent-assessee.

9. Mr. Puneet Rai, learned Senior Standing Counsel for the appellant, argued that the Tribunal has seriously erred in relying upon the judgment of this Court in the case of ***Sneh Lata Sawhney (supra)***, without taking into account the major distinction in the facts inasmuch as in the case of ***Sneh Lata Sawhney (supra)***, the treaty in question was one entered into between India and Swiss Federal Council, which contained a specific provision denying the prior period information, whereas the terms of the Hong Kong treaty were not the same.

10. While informing that according to Article 14 (paragraph 3) of the protocol, the information by any contracting country could be asked, he argued that the protocol between India and Swiss Federal Council



specifically provided that the same shall apply from the first day of January of the year following the date of the signature of the Amending Protocol. And therefore, the High Court held that since the information sought in the case of **Sneh Lata Sawhney** (*supra*) related to a period prior to the date of said protocol, reference itself was invalid.

11. He argued that it was in such circumstances that the High Court took a view that the reference was invalid and the Department could not get the benefit of the extended period of limitation, as per Clause (ix) of the explanation to Section 153(B) of the Act of 1961.

12. He pointed out that the transactions in the case of **Sneh Lata Sawhney** (*supra*) related to the date prior to the date of amendment brought in the protocol appended with the agreement between the Government of the Republic of India and the Government of the Swiss Federal Council for the avoidance of double taxation, which was amended w.e.f. 30.08.2010. And then, submitted that as against this, if the protocol of Agreement for exchange of the information with respect to taxes with Foreign Countries Hong Kong (*hereinafter referred to as 'treaty between India and Hong Kong'*) applicable to its Article 26 is taken into account, para 5 thereof clearly shows that any of the contracting party shall be entitled to seek information that precedes the date on which the treaty between India and Hong Kong was executed.

13. He vehemently argued that since the treaty between India and Hong Kong came into force on 30.11.2018, the appeals filed by the assessee could not have been allowed, as Clause 5 of the Protocol provides for exchange of information that precedes the date of effectiveness of the treaty.

14. We have heard learned counsel for the appellant and perused the



material on record. At the first look, it may appear that the Tribunal was not justified in allowing the appeals simply following the judgment of this Court in the case of *Sneh Lata Sawhney (supra)*, as the treaties in question are different and also because the Tribunal has not considered the provisions of the treaty between India and Hong Kong, which were substantially different.

15. Be that as it may. We have examined and delved into the relevant provisions of the protocol between two countries, namely Swiss Confederation *vis-a-vis* the treaty with Hong Kong. It will not be out of place to reproduce the corresponding and relevant part of both the treaties, for ready reference and comparative analysis.

16. So far as the relevant part of the protocol between **India and Swizerland** is concerned, Article 14 thereof is relevant, for which purpose it is reproduced as under:-

*“Notwithstanding paragraph 2 of this Article, with respect to Article 26 of the Agreement, the exchange of information provided for in this Amending Protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of signature of this Amending Protocol.”*

*(emphasis supplied)*

17. In contrast to the aforesaid protocol to Article 26 particularly para no.5 of the **treaty between India and Hong Kong**, is reproduced hereunder:-

*“With reference to Article 26 (Exchange of Information) of the Agreement, it is understood that:*

*(a) Information exchanged shall not be disclosed to any third jurisdiction.*

*(b) The competent authority of India may disclose information to:*

*(i) Parliamentary Committees;*



- (ii) *Special Investigation Team (SIT) constituted by Government; and*
- (iii) *Any other oversight bodies mutually agreed upon in writing.*
- (c) *The requested Contracting Party **shall disclose any information that precedes the date on which the Agreement has effect for the taxes covered by the Agreement, insofar the information is foreseeably relevant for a fiscal year or taxable event following that date.***
- (d) *in addition to the taxes covered by the Agreement, the provisions of this Article also apply to the following taxes that are administrated and enforced in India:*
  - (i) *the wealth tax;*
  - (ii) *the excise and customs duties;*
  - (iii) *the goods and services tax (GST); and*
  - (iv) *the sales and value added taxes.”*

*(emphasis supplied)*

18. A close and comparative reading of the relevant parts, which have been bolded by us, reveals that the treaty between India and Swiss Confederation, provides that the protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of its signature.

19. The expression therefore, means that the Article 26 of Treaty of India and Swiss Confederation would apply to any information relatable to the fiscal year, after 01.01.2011 (date of amendment being 30.08.2010) meaning thereby 01.04.2011.

20. Whereas clause 5(c) of the Protocol applicable to Article 26 of the treaty between India and Hong Kong if interpreted, clearly suggests that it provides for disclosure of information that precedes the date on which the agreement was signed, but such clause is qualified by the expression that the information should be relevant for a fiscal year or taxable event following



that date.

21. In other words, Clause 5(c) of the Protocol to Article 26 of the treaty between India and Hong Kong, which came into force on 30.11.2018 provides that the information can be provided for a fiscal year or taxable event falling after such date. Hence, the information can be elicited for a transaction having taxable event after 01.04.2019 or at best after 30.11.2018.

22. Needless to observe that in the case of tax under the Income Tax Act, the taxable event is the first day of the assessment year or in other words first date following the end of financial year.

23. If the aforesaid Clause 5(c) of Article 26 of the treaty between India and Hong Kong is taken into account, it clearly postulates that the Income Tax Department can elicit any information relevant to Financial Year 2019-20 or for the Assessment Year 2020-21 in respect of the transaction taking place after 01.04.2019 or a transaction qua which the taxable event is 01.12.2018

24. As an upshot of the discussion foregoing, we are of the considered view that the AO could not demand any information for the Assessment Year 2017-18.

25. Hence, may be for different reason that has been recorded by the Tribunal, the reference made to FT&TR was improper and impermissible in the eye of law. Therefore, the AO cannot get the advantage of extension of limitation period by a year, as provided in clause (ix) of the explanation to Section 153(B) of the Act of 1961.

26. To this limited extent only, the judgment of this Court rendered in the case of *Sneh Lata Sawhney (supra)* is relevant regardless of the covenants.





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27. The appeals, therefore, fail. All pending applications also stand disposed of.

**DINESH MEHTA  
(JUDGE)**

**VINOD KUMAR  
(JUDGE)**

**JANUARY 22, 2026/MR**