

ORDER SHEET  
ITA 789 of 2004  
IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction (Income Tax)  
ORIGINAL SIDE

C. I. T. KOLKATA - IV  
Versus  
EVEREADY INDUSTRIES (INDIA) LTD.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI  
The Hon'ble JUSTICE AMRITA SINHA  
Date : 9th August, 2018.

Appearance:  
Mr. M. P. Agarwal, Adv.  
Mr. Aniket Mitra, Adv.

Mr. J. P. Khaitan, Sr. Adv.  
Mr. Asim Chowdhury, Adv.  
Mr. Rohan Poddar, Adv.

The Court : This appeal was heard on the questions of law framed by the order dated 8<sup>th</sup> June, 2005 by a Division Bench of this Court. Those questions of law are enumerated below:

- (i) *Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal retaining disallowance of Rs. 8, 00, 000/- only out of the claim of expenditure of Rs. 59, 88, 728/- for alleged security at tea gardens, thereby giving relief of Rs. 51, 88, 728/- is perverse as the entire expenditure was unproved, the payee concerns were non-existent, no confirmation was filed for security claimed to have been provided and security had been provided by Indian Tea Association against payment ?*
- (ii) *Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal allowing payment of Rs. 1, 68, 10, 480/- to Gangan Properties Pvt. Ltd. for alleged supply of organic manure is perverse & erroneous as the party had passed only accommodation entries through a circuitous chain of transactions without*

*rendering actual services and a confessional statement to that effect was made by the alleged supplier of Gangan Properties Pvt Ltd ?*

- (iii) Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal allowing payment of alleged rent of Rs. 12, 01, 320/- to Dakorji Properties Pvt. Ltd is perverse as the premises had not been transferred to Dakooji Property Pvt. Ltd. by the actual owners of the property, a dispute was going on and the keys of the premises were lying with the police ?*
- (iv) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding interest of Rs. 22, 07, 47, 000/- received as “Profits and Gains of Business” instead of “Income from other Sources”, contrary to law, on the basis of its order for earlier years against which appeals under Section 260A of the Income Tax Act, 1961 have been admitted by the Hon’ble Court ?*
- (v) Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal allowing provisions of Rs. 82, 64, 000/- for post-retirement benefit of the employees is perverse and erroneous as it was in the nature of only a contingent liability ?*
- (vi) Whether, on the facts and in the circumstances of the case, the order of the Income-tax Appellate Tribunal allowing ex gratia payment of Rs. 1, 02, 00, 000/- as compensation to the retired employees is perverse and erroneous as the scheme had fallen through and the amounts received from the employees were returned to them with interest ?*

It is well-settled by authority that a substantial question of law denotes a question of law of great substance and public importance. An ordinary question of law cannot be termed as a substantial question of law. The statute, while engrafting Section 260A of the Income Tax Act, 1961 allowed appeals from the orders of the Tribunal to the High Court on

substantial questions of law only, making it akin to second appeals under the Civil Procedure Code.

In this appeal, we find that five issues have been identified as giving rise to substantial questions of law, by the said order dated 8<sup>th</sup> June, 2005. On hearing this appeal we find that these questions are substantially factual. They do not give rise to any substantial question of law.

The first question invites the Court to adjudicate whether the partial disallowance of expenditure by the assessing officer was justified. It was sought to be contended that the entire expenditure was unproved and ought to have been disallowed. It was urged that the finding was so perverse that it gave rise to a substantial question of law.

We do not agree. If less expenditure has been disallowed or the entire expenditure has not been disallowed, it is, in our opinion, a plain and simple question of fact. On the alleged failure to make disallowance, we do not find any perversity involved. A remedy if, at all, lay in a further appeal on a question of fact. But the law does not allow any such further appeal. Under Section 260A, we cannot allow this question to be raised.

Similar is the position with regard to question (ii) which is also an absolutely factual issue, in our opinion, and no perversity in the finding is involved so as to attract Section 260A.

Question (iii) involves the application of Section 30 of the said Act which is as follows:

*“S. 30. Rent, rates, taxes, repairs and insurance for buildings. – In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed –*

*(a) where the premises are occupied by the assessee –*

*(i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;*

*(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises.”*

Mr. Agarwal, learned counsel for the Revenue argues that the assessee had not been in possession of the property and a dispute was going on between them and the lessor. The keys of the premises were lying with the police. Therefore, the application of Section 30 was dependent upon the findings whether the assessee was a tenant, paying rent and using the demised premises for the purpose of its business. We find on an examination of the order of the Tribunal that all these factual issues have been answered in favour of the assessee. Now, when these facts are in favour of the assessee, it is not within the domain of a Court exercising jurisdiction under Section 260A to enquire into the correctness of that fact finding and return a contrary finding that the assessee was not a tenant, and was not in using the premises for business purposes, overturning the ruling of the Tribunal. On this issue also, we are not inclined to interfere with the finding of the Tribunal.

As far as question no. (iv) is concerned. Mr. Agarwal submitted that he was not placing the point very seriously in view of the decision of this Court in (2010 323 ITR 312) Eveready Industries India Ltd. Versus CIT & Anr.

As far as question no. (v) is concerned, Mr. Agarwal very strenuously argued that the provisions for Rs. 82, 64, 000/- was a benefit conferred on the employees on superannuation or was a retirement benefit.

Analysing the question, we find that this issue does not appear from the question raised. The issue which is raised is whether the provision regarding Rs. 82, 64, 000/- was in the nature of a contingent liability and thus not allowable. Neither was the issue raised in the way Mr. Agarwal has sought to raise it now, before the Tribunal. Learned counsel tried to submit that on application of Section 40A (7) and Section 36 (1) (iv) of the said Act, these provisions being one for benefit of employees on superannuation ought to be approved by the appropriate authority and in the absence of that the deduction was not admissible. We find on examination of the order of the Tribunal that its decision was based on (2000) 245 ITR 428 where the Supreme Court held that the liability was not a contingent liability. In that case, the Supreme Court was concerned with beneficiary schemes for encashment of leave of the assessee company Bharat Earth Movers. In this case a scheme for medical benefit post retirement was involved. The tribunal treated the liability as accrued and to be discharged in the future, based on the above Supreme Court decision. In our opinion, this finding of the tribunal is based on standard accounting principles and consequential application of the law laid down by the Supreme Court in Bharat Earth Movers Versus CIT,

(2000) 245 ITR 428 (SC). We find no infirmity in the reasoning or conclusion reached by the Tribunal.

The last question also involves questions of fact which should not be entertained in this appeal.

For all those reasons, this appeal under Section 260A is dismissed. We do not make any order as to costs.

(I. P. MUKERJI, J.)

(AMRITA SINHA, J.)

A Dey