

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.06.2018
CORAM
THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MS.JUSTICE P.T.ASHA

Tax Case (Appeal) No.290 of 2018

The Principal Commissioner of Income Tax 6,
No.121, Mahatma Gandhi Road,
Chennai.

.. Appellant/Respondent

Vs.

P.S.Raghupathy

... Respondent/Appellant

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai, dated 22.11.2017 passed in I.T.A.No.2510/Mds/2017.

TCA.290 of 2018

Against the order dated 29/08/2017 made in ITA.NO.173/2015-16/CIT(A)15, on the file of the commissioner of Income Tax (Appeals)-15, 121, Mahatma Gandhi Road, Chennai-600 034, which was filed against the order dated 27.03.2015 in PAN/GIR No.AAFPR5050E on the file of the Assistant Commission of Income Tax, Non-Corporate circle 15(1) Chennai 600 034 and against the order dated 29/12/2009 and made in GIR/PA.No.AAAFE1480C on the file of the Assistant Commissioner of Income Tax, Business Circle XV Chennai-34.

For Appellant : Mr.T.R.Senthil Kumar
and Mr.S.Rajesh

JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

This appeal filed by the Revenue is against an order of

the Income Tax Appellate Tribunal "C" Bench, Chennai, partly allowing the appeal of the respondent assessee, being I.T.A.No.2510/Mds/2017, against the appellate order dated 29.8.2017 of the Commissioner of Income Tax (Appeals)-15, dismissing the appeal of the respondent assessee, being I.T.A.No.173/2015-16/CIT(A)-15, against an impugned order of re-assessment dated 27.3.2015 under Section 147 read with Section 254 of the Income Tax Act, 1961, hereinafter referred to as "the said Act" for the assessment year 2007-2008.

2. The respondent assessee filed return of income on 31.10.2007 declaring total income of Rs.57,57,356/- for the assessment year 2007-2008. The income tax return was processed under Section 143(1) of the said Act and the assessment was completed on 29.12.2009. Later, notice under Section 142(1) read with Section 129 of the said Act was issued on 16.2.2015.

3. It appears that during the previous year relevant to assessment year 2007-2008, the respondent assessee had sold agricultural land at Pudupakkam village and Santhankuppam village, Chengalpet Taluk, Kancheepuram District for Rs.14,90,00,000/- and claimed exemption on the ground that the land being agricultural land, the same did not attract capital gains.

4. After considering submissions of the respondent assessee and/or his representative, the Assessing Officer disallowed the exemption of Rs.14,38,86,650/- claimed by the respondent assessee on the ground that the agricultural land had not been sold for agricultural purpose. The Assessing Officer took note of the fact that the respondent assessee had not been deriving any income from agricultural operations and incurring only losses.

5. Being aggrieved, the respondent assessee appealed to the Commissioner of Income Tax (Appeals)-15, the appeal being I.T.A.No.173/2015-16/CIT(A)-15, which was dismissed by an order dated 29.8.2017 upholding the disallowance of exemption of Rs.14,38,86,650/- claimed by the respondent assessee.

6. The Appellate Commissioner, inter alia, found that the respondent assessee had sold 7 acres of land for a consideration of Rs.14,90,00,000/-, for which he claimed an exemption under Section 2(14)(iii) on the ground that the land sold by him was agricultural land. However, the respondent assessee could not produce supporting evidence for agriculture expenditure, sale of agricultural produce etc. The Appellate Commissioner disagreed with the contentions of the respondent assessee on the following grounds:

(a) The respondent assessee could not establish that the land was agricultural land and could not submit books of accounts and supporting documents such as bills and vouchers towards agricultural activities.

(b) The respondent assessee did not declare any agricultural income from the land.

(c) Mere classification of the land as an agricultural land as per Chitta and Adangal is not sufficient to prove that the land in question was used for agricultural activities. The appellant had not submitted a certificate from the Tahsildar, the competent authority, to certify that agricultural activity was carried on in the said land.

7. Being aggrieved, the respondent assessee filed an appeal, being I.T.A.No.2510/Mds/2017, before the learned Income Tax Appellate Tribunal 'C' Bench, Chennai, which has partly been allowed and partly dismissed. The disallowance of exemption of Rs.14,38,86,650/- claimed by the respondent assessee has been set aside with the following observations and/or findings:

"6. The land in question which has been sold admittedly has been shown as agricultural land as per the Chitta & Adangal. The distance from the nearest Municipality has also been shown to be beyond 8 Kms. The land Revenue records also clearly shows that the land specified is agricultural land. In fact, there is an Inspector's Report referred to in the Assessment Order dated 29.12.2009 wherein it is mentioned that the Inspector has verified the place and has also contacted with the Village Administrative Office and the President of Pudupakkam Village. The copy of the unsigned Inspector's Report has also been placed before us by the Revenue. A perusal of the order of the Id.CIT(A) shows that he has rejected the said Inspector's Report on the ground that the same is unsigned. The signing or un-signing of Inspector's Report is not within the control of the assessee. The fact that such Report was available in the assessment records and the same has also been referred to in the scrutiny assessment proceedings completed on 29.12.2009 clearly shows that the agricultural operations were also carried on the said land and is a valid document. Further, the assessee's case as to whether the running of Nursery was agricultural or not had been considered

by the Hon'ble Jurisdictional High Court of Madras and running of the Nursery has been held to be agricultural operation. A perusal of the Assessment Order also shows that the AO has recognized that the assessee was running a Nursery under the name and style of Soundariya Nursery. A perusal of the provisions of Sec.2(1A) as also Sec.2(14)(iii) shows that agricultural land is not liable to be treated as a capital asset subject to the condition that the land is situated in an area where the Municipality has a population of less than 10,000 or at a distance of more than 8 Kms from Municipality or cantonment which has a population of more than 10 lakhs.

7. In the present case, admittedly, the land sold by the assessee is situate beyond 8 Kms limit, the land Revenue is collected in the form of Kist in respect of the agricultural land, the land Revenue records shows the land as agricultural land. Thus, all the conditions required for holding the land as agricultural land stands complied. This being so, we are of the view that the land sold by the assessee being an agricultural land and consequently the same cannot be treated as a capital asset, the sale of which gives rise to capital gains.

8. In the result, in Ground Nos.6 to 8 of the assessee's appeal stands allowed. ..."

8. Being aggrieved, the Revenue seeks to file an appeal raising the following questions:

- (1) Whether the Appellate Tribunal was right in holding that land sold by the assessee, being agricultural land, the same cannot be treated as a capital asset and no capital gains is chargeable?
- (2) Whether the learned Tribunal failed to appreciate the Explanation to Section 2(1A)?
- (3) Whether sale proceeds of agricultural lands are also taxable under Section 2(14)(iii) of the Income Tax Act, inserted by the Finance Act, 1989, with effect from 1.4.1970?
- (4) Whether the Income Tax Appellate Tribunal was justified in holding that the land was agricultural land disregarding the absence of any evidence that agricultural activity was being carried on at the time of sale?
- (5) Whether on the facts and in law the Income Tax Appellate Tribunal erred in allowing the exemption,

even though the assessee had not offered any agricultural income between Assessment Years 2003-04 to 2007-08?

(6) Whether on the facts and in law the Income Tax Appellate Tribunal erred in allowing the exemption to the assessee who purchased another agricultural land from out of the sale proceeds and also purchased residential property in the name of his wife, Mrs.Vimala Raghupathy vide document No.6512 of 2006, 6513 of 2006 at SRO Neelankarai?

9. Based on the evidence on record, the learned Tribunal which is a fact finding body arrived at the factual finding that the land in question was agricultural land, which did not attract capital gains. A perusal of the definition of "capital asset" in Section 2(14) of the Income Tax Act makes it amply clear that capital asset does not include agricultural land, except for agricultural land exempted under Clauses (a) and (b) of Section 2(14)(iii) of the Income Tax Act. The learned Tribunal, in effect and in substance, held that the land in question did not come within any of the exceptions to the definition of agricultural land enumerated in Section 2(14)(iii) of the Income Tax Act.

10. The short question before us is whether this appeal filed by the Revenue against the order of the learned Tribunal should be entertained?

11. Section 260A of the Act provides as follows:

"Section 260A. Appeal to High Court.

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law. सत्यमेव जयते

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or an Assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the Assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

- (b) [***];
- (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -
(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

12. An appeal lies under Section 260-A of the said Act, only when there is a substantial question of law. We find that there is no question of law involved in this appeal much less any substantial question of law.

13. In *Sir Chunilal V. Mehta & Sons Ltd. vs Century Spg. & Mfg. Co. Ltd.*, reported in AIR 1962 SC 1314, the Supreme Court agreed with and approved a Full Bench Judgment of this Court in *Rimmalapudi Subba Rao vs Noony Veeraju And Ors* reported in AIR 1951 Mad 969 and laid down the principles for deciding when a question of law becomes a substantial question of law.

14. In *Hero Vinoth Vs. Seshammal* reported in (2006) 5 SCC 545, the Supreme Court followed *Sir Chunilal V. Mehta & Sons* (supra) and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

15. The relevant paragraphs of the judgment of the Supreme Court in *Hero Vinoth* (supra) are set out herein below :

"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means—of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with—technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta* [(1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal* case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

"When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR pp. 557-58)

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

22. In Dy. Commr. v. Rama Krishna Narain [1954 SCR 506 : AIR 1953 SC 521] also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 CPC.

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179] .)

24. The principles relating to Section 100 CPC relevant for this case may be summarised thus :

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal

issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law .

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

16. In *M. Janardhana Rao Vs. Joint Commissioner of Income Tax* [2005 273 ITR 50 (SC)], the Hon'ble Supreme Court held that the principles contemplated under Section 100 of the Code of Civil Procedure would apply to Section 260-A of the IT Act too.

17. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal only in a case which involves substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal. In this case, the learned Tribunal arrived at the factual finding that the land in question sold by the respondent assessee was agricultural land.

18. Mr. T. R. Senthil Kumar, emphatically argued that the Assessing Officer arrived at his finding based on the fact that the land in question had been classified in the records of the Sub Registrar Office as revenue land. However, as would appear from the order of the assessment itself, it was classified as agricultural land in the revenue records. Even otherwise, the learned Tribunal had looked into the relevant materials including the revenue records, as also records which indicate that the respondent assessee ran a Nursery.

19. The learned Tribunal was of the view that whether there was agricultural income or not was not relevant. No fault can be found with the reasoning of the learned Tribunal. The fact that there was loss and not income could not have made any difference to the nature and character of the land.

20. We do not find any question of law, far less any substantial question of law that warrants interference.

The appeal is, therefore, not entertained and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar
Income Tax Appellate Tribunal
"C" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-15
Chennai - 600 034.
3. The Assistant Commissioner of Income Tax,
Business Circle XV,
Chennai - 600 034.
4. The Assistant Commissioner of Income Tax,
Non-Corporate circle (15)1, Chennai-34

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.40713

Tax Case (Appeal) No.290 of 2018

NMI (CO)
GSP(16/07/2018)