Court No. - 3

Case :- INCOME TAX APPEAL No. - 5 of 2015
Appellant :- Shri Arvind Kumar Chaudhary Prop. Chaudhary Hostel Basti
Respondent :- Commissioner Of Income Tax Civil Lines Faizabad
Counsel for Appellant :- Desh Deepak Chopra
Counsel for Respondent :- Sidharth Dhaon,Mr. Sidharth Dhaon

Hon'ble Sudhir Agarwal,J.
Hon'ble Attau Rahman Masoodi,J.

1. This Income Tax Appeal filed under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as the "Act, 1961") has arisen from judgment and order dated 05.09.2014 passed by Income Tax Appellate Tribunal, Lucknow (hereinafter referred to as the Tribunal) in Income Tax Appeal No. 645 of 2011 relating to assessment year 2005-06.

2. Proceedings were initiated against Assessee appellant under Section 148 of Act, 1961 with regard to alleged loan of Rs.10,00,000/-advanced to one Sri Satya Prakash Jaiswal Proprietor of M/s Akash Trading Co., Malviya Road, Basti. Assessing Authority has held that despite advancement of said loan, same was not recorded in the books of accounts and return was filed without disclosing the same. Assessing Authority issued notice under Section 142 (1) on 19.08.2009, on which date learned counsel on behalf of the assessee appeared and requested for adjournment. He was asked to furnish vakalatnama and source of investment of loan of Rs.10,00,000/-given to Sri Satya Prakash Jaiswal along with documentary evidence to show cause, why the amount may not be treated as undisclosed investment and added to the total income of Assessee. The case was adjourned for 30.09.2009. Thereupon one Sri H. Rahman, Advocate appeared and requested for further adjournment which was granted and case was fixed for 04.11.2009.

3. Learned counsel appeared on 04.11.2009 before Accessing Authority and filed reply. Thereafter on the next date fixed i.e 18.11.2009 neither counsel nor Assessee appeared nor any application for adjournment was filed hence Accessing Authority under Section 144(1) of the Act, 1961 completed proceedings and made addition of Rs.10,00,000/-.

4. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) which was dismissed on 25.08.2011 against which he preferred further appeal before the Tribunal which was also dismissed. The said dismissal order is impugned in the present appeal.

5. Learned counsel for the appellant contended that he had raised several grounds before Tribunal but those grounds have not been considered by it.

6. However, we find that only two questions were raised which have been mentioned in para 3 of judgment of Tribunal which read as under:-

> *"It was submitted by Learned A.R. of the assessee that no opportunity was provided by the Assessing Officer before completing the assessment u/s 144 of the Act and therefore, the assessment u/s 144 is not valid. He also submitted that there was no material for reopening and therefore, reopening is not valid. He placed reliance on the following judicial pronouncement:*
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> *(I) Commissioner of Income-tax Vs. Aggarwal Engg. Co.[2008] 302 ITR 246 (P&H)*
>
> *(ii) Raj Mohan Saha Vs. Commissioner of Income-tax [1964] 52 ITR 231 (Ass)*
>
> *(iii) Baliah (K) Vs. Commissioner of Income-Tax[1965] 56 ITR 182 (Mys)*
>
> *(iv) Commissioner of Income-tax Vs. [1998] 229 ITR (All)"*

7. Tribunal has considered the aforesaid contentions and after confirming concurrent findings of fact recorded by Assessing Authority and Commissioner of Income Tax (Appeals) [hereinafter referred to as the C.I.T.(A)] has dismissed appeal.

8. Before this Court, there is not even a single new ground for being considered. The Tribunal has confined its judgment only to the two grounds conversed before it and has not considered other grounds in absence of arguments advanced.

9. The substantial questions of law which have been framed by the appellant in the memo of appeal do not amount to any substantial question of law. If any question has been formulated by the appellant for the purpose of Section 260-A it does not amount to substantial question of law.

10. Though learned counsel for the appellant has sought to argue that there do involve certain questions of law but we are afraid and inclined to observe that the alleged questions are abstract legal proposition but on a deeper scrutiny of the judgments of Courts below and facts of this case, we find that either no substantial question of law has arisen in this matter or that the questions raised are already covered by the several authorities of Apex Court and this Court, and, on a simple application thereof to the facts of this case, the entire edifice of defendant-appellants would shatter or the questions do not arise at all in this case.

11. In our considered view the arguments advanced by learned counsel for appellants, though per se, may involve some questions of law but either none is arising in this case, or, well settled and require only application. In any case it cannot be said that any substantial question of law is arising in this case.

12. There are two situations in which, ordinarily, interference with findings of fact is permissible, namely, (a) when material or relevant evidence is not considered, which if considered, would have led to opposite conclusion, and (b) where a finding has been arrived at by court below by placing reliance on inadmissible evidence, which if would have been omitted, an opposite conclusion would have been possible. We derive these principles from some of the authorities of Apex Court and, briefly, it would be appropriate to refer the same.

13. In ***Dilbagrai Punjabi Vs. Sharad Chandra***, AIR 1988 SC 1858, the Court affirmed the observations of High Court that First Appellate Court is under a duty to examine entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue, and the error which arises is of magnitude that it gives birth to a substantial question of law, the High Court would be entitled to set aside the finding.

14. In ***Jagdish Singh Vs. Nathu Singh***, AIR 1992 SC 1604, it was said, where finding by court of facts is vitiated by non consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper finding.

15. In ***Sri Chand Gupta Vs. Gulzar Singh***, AIR 1992 SC 123 the Court upheld interference by High Court in second appeal where the Lower Appellate Court relied an admission of third party treating it as binding on the defendant though it was inadmissible against the said defendant.

16. In ***Sundra Naicka Vadiyar Vs. Ramaswami Ayyar***, AIR 1994 SC 532 the Court said where certain vital documents for deciding the question of possession were ignored, such as compromise, an order of revenue Court relying on oral evidence was unjustified.

17. In ***Ishwar Dass Jain (Dead) through Lrs. Vs. Sohan Lal (Dead) through Lrs.,*** 2000 (1) SCC 434 the Court in paras 11 and 13 of the judgment clearly mentioned two situations in which inference with findings of fact is permissible. It is said:

> *"11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. . . . ."*
> *"13. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate Court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. . . ."*

18. In ***Govindaraju Vs. Mariamman*** 2005 (2) SCC 500 the Court said that existence of substantial question of law is the sine qua non for exercise of jurisdiction under Section 100 of the Code. If a second appeal is entertained under Section 100 without framing substantial questions of law then it would be illegal and would amount to failure or abdication of duty cast on the Court. The Court relied on its earlier decisions in Kshitish Chandra Purkait Vs. Santosh Kumar Purkait & Ors., 1997(5) SCC 438; Panchugopal

Barua Vs. Umesh Chandra Goswami 1997(4) SCC 413; and, Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar 1999 (3) SCC 722.

19. In ***Santosh Hazari Vs. Purushottam Tiwari***, 2001 (3) SCC 179 the Court considered what the phrase "substantial question of law" means. It says that the phrase 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 substances or consequence, or academic merely.

20. A Full Bench of Madras High Court in Rimmalapudi Subba Rao Vs. Noony Veeraju, AIR 1951 Madras 969 considered this term and said:

> *"when a question of law is fairly arguable, where there is room for difference of opinion or where the Court thought it necessary to deal with that question at some length and discuss an alternative view, then the question would be a substantial question of law. On the other hand, if the question was practically covered by decision of highest Court or if 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 case, it could not be a substantial question of law."*

21. The above observations were affirmed and concurred by a Constitution Bench in ***Sir Chunilal Mehta and Sons Ltd. Vs. The Century Spinning and Manufacturing Company Ltd.*** AIR 1962 SC 1314. Referring to above authorities, the Court in Santosh Hazari (supra) said:

> *"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. 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, in so far 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."

22. The decision in ***Santosh Hazari*** (supra) has been followed in ***Govindaraju (supra) and Thiagarajan and others Vs. Sri Venugopalswamay B. Koll and others***, AIR 2004 SC 1913.

23. In ***Union of India Vs. Ibrahim Uddin and another*** (2012) 8 SCC 148, the Court said:

"There may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. It may be necessary to do so for the reason that after all the purpose of the establishment of Courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal."

24. We are, therefore, of the view that no substantial question of law has arisen in this matter. Besides the discussion made above, learned counsel for the appellant has also failed to point out any perversity, legal or otherwise in the judgments of Courts below, so as to warrant interference by this Court. It is not shown that any admissible and relevant evidence was ignored or any inadmissible evidence was taken into consideration or there is any other perversity, legal or otherwise, in the judgment under appeal.

25. This appeal is hereby rejected.

Order Date :- 16.1.2017
Shahnaz