



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

INCOME TAX APPEAL NO. 37 OF 2025

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME - TAX,
CENTRAL, 3RD FLOOR, C.R. BUILDING,
QUEEN'S ROAD, BENGALURU - 560 001.
2. THE PR. COMMISSIONER OF
INCOME - TAX, CENTRAL, BANGALORE.
PRESENT ADDRESS
THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, NO.305/AAYAKAR BHAVAN,
NO.21/16, RESIDENCY ROAD,
NAZARBAD, MYSURU - 570 010.

...APPELLANTS

(BY SRI. Y.V.RAVIRAJ., ADVOCATE)

AND:

HARISHA,
NO.217, A BLOCK, 7TH MAIN,
VIJAYANAGAR, MYSORE - 570 017.
PAN NO.ABCPH 3177L.

...RESPONDENT

(BY SRI.RAVISHANKAR S.V., ADVOCATE)

THIS ITA/INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO i. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA



NO.816/BANG/2024 DATED 16.08.2024 FOR ASSESSMENT YEAR 2019-2020 ANNEXURE - A AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, MYSORE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Revenue is invoking the appellate jurisdiction of this Court for assailing the ITAT order dated 16.08.2024, whereby relief has been accorded to the Assessee.

2. The Revenue has structured this appeal on the following substantial questions of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in setting aside the order under section 263 passed by PCIT by holding that the same is not within the purview of section 263 of the act without considering the fact that the assessment order without valuation report of the DVO is erroneous and prejudicial to the interest of Revenue"?

3. Learned counsel representing the Assessee vehemently argues that going by the pith and substance of



the same question, it cannot be termed as a 'question of law', let alone 'Substantial Question of Law'.

4. This Court in ITA No.383/2016, disposed on 20.07.2022, has discussed the idea of Substantial Question of Law keeping in view Section 100 of the CPC, as under:

"A. THE RIGHT OF APPEAL U/S 260A; ITS SCOPE & CONTENT:

(i) The Kerala High Court in CIT vs. WOONDUR JUPITAR CHITS (P) LIMITED¹ had pointed out that the provisions of 1961 Act providing for reference on a question of law arising out of an order of the Tribunal were 'Archaic' and therefore there was an eminent need for rationalisation of the same. Accordingly, the Parliament vide Finance (2) Act, 1998 inserted inter alia Sections 260A & 260B in Chapter – XX of the 1961 Act to provide for an appeal against the orders of Tribunal directly to the High Court, within whose jurisdiction, Office of the AO is situate. Sub-section (1) of Section 260A reads as under:

"S. 260A. (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."

(Other sub-sections not being much relevant are not reproduced)

¹ 213 ITR 73



Appeal lies only if the case involves a substantial question of law, which the memorandum of appeal, ideally speaking, has to precisely state. However, if the High Court is satisfied that a substantial question of law is otherwise involved, it may itself formulate such question and admit the appeal. Appeal shall be ordinarily heard on the question so formulated. However, there is nothing, in the Act which would abridge the power of Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, in addition to or substitution of the one framed in the appeal memo, if it is satisfied that the case involves such other question.

(ii) The appeal, be it of the Revenue or the Assessee, lies only "... if the High Court is satisfied that the case involves a substantial question of law ..." Sub-Section (7) of Section 260A states that the provisions of Code of Civil Procedure, 1908 relating to appeals to the High Court, as far as may be, apply to these appeals. This Section is analogous to Section 100 of CPC. Noticeably, both these Sections i.e., Section 260A of 1961 Act and Section 100 of CPC do not define the expression 'substantial question of law'. The Apex Court vide SANTOSH HAZARI vs. PURUSHOTTAM² is of the view that the word 'substantial' qualifies the term 'question of law'; it means a question having substance, essential, real, of sound worth, important or considerable. The substantial question of law on which an appeal shall be heard need not necessarily be a question of law of general importance. To be 'substantial', a question of law must be debatable and it must have a material bearing on the decision of the case in the sense that if answered either way insofar as the rights of the parties are concerned.

(iii) It is profitable to see what Kanga & Palkhivala's 'Law and Practice of Income Tax', Vol. II, Eleventh Edn., Lexis Nexus at pages 3316 – 17 states:

*"...A question is a substantial question of law if:
(i) it directly or indirectly affects substantial*

² 251 ITR 84



rights of the parties; or (ii) it is of general importance; (iii) it is an open question in the sense that the issue has not been settled by a pronouncement of the Supreme Court; (iv) it is not free from difficulty; or (v) it calls for a discussion for alternative view... The findings are based on no evidence; (vii) relevant admissible evidence has not been taken into consideration; (viii) inadmissible evidence has been taken into consideration; (ix) legal principles have not been applied in appreciating the evidence; or (x) the evidence has been misread..."

These tests are stated to be illustrative and in no way exhaustive of the powers of the High Court to entertain an appeal, if there is other substantive ground of law. It hardly needs to be stated that a provision for appeal should be liberally construed and read in a reasonable & practical manner".

5. We are of the considered opinion that the question framed is neither a question of law, nor a mixed question of law & facts, more particularly when it related to non-furnishing of valuation report of a particular property allegedly because the Assessee did not co-operate. Ordinarily, when the owner or occupier of the property does not co-operate in the process of valuation, the exercise should be undertaken by adopting best judgment valuation principle. This reasoning animates the impugned order of the Tribunal.



In the above circumstances, the appeal being unmeritorious is liable to be rejected and accordingly it is, costs having been made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

RD