

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2642 OF 2018

Pr. Commissioner of Income Tax, Central, ...Appellant
Nagpur.

Versus

Ashoka Buildcon Limited ...Respondent

Mr. Ashok Kotangle with Mr. Pranav Kulkarni, for the Appellant.
Mr. Sameer G. Dalal, for the Respondent.

**CORAM: SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.**

DATED: 1st OCTOBER, 2026.

PC:- *(Per Suman Shyam, J.)*

1. Heard Mr. Ashok Kotangle, learned counsel appearing for the Appellant. Also heard Mr. Sameer G. Dalal, learned counsel appearing for the Respondent.

2. This Appeal has been preferred by the Department (Revenue) under Section 260A of the Income Tax Act, 1961, assailing the judgment and order dated 5th April, 2018 passed by the learned Income Tax Appellant Tribunal (**ITAT**), Pune, in Income

Tax Appeal No. 67/PUN/2016 for the Assessment Year 2004-05, deleting the penalty imposed upon the Respondent.

3. In the memorandum of Appeal, the Appellant had originally projected the following substantial questions of law:-

“(a) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was justified in deleting the penalty u/s. 271(1)(c) of the Act?

(b) Whether on the facts and circumstances of the case and in law, the Tribunal is right in deleting the penalty on technical grounds and not deciding the issue on merits, it being the highest fact finding authority?

(c) Any other question to be raised at the time of appeal?”

4. The facts of the case, as apparent from the material on record, in a nutshell, are that the Respondent is a limited company engaged in the business of construction, development, operation and maintenance of infrastructure facilities. After the assessment order (A.Y. 2024-05) dated 27th December, 2007 was passed by the Assessment Officer (AO) on the revised return of income filed by the Respondent on 30th October, 2015 showing the revised income as Rs. NIL, proceeding under Section 147 of the Act, 1961 was initiated by issuing notice under Section 148 of the Income Tax

Act, 1961. On re-assessment, the income of the assessee company/Respondent was finalized at Rs.12,42,43,556/- by disallowing the brought forward losses and unabsorbed depreciation of amalgamating companies. Penalty proceedings under Section 271(1)(c) were also initiated against the Respondent and penalty order dated 26th March, 2015 was issued. The Respondent challenged the order of penalty before the CIT (Appeals) who had granted relief to the Respondent in respect of disallowance made by the AO for an amount of Rs.8,68,974/- on account of delayed payments of contribution to PF and ESIC. Assailing the order of the learned CIT(Appeals), the Revenue had approached the ITAT, Pune by filing Appeal No.67/PUN/2016 which was dismissed by the learned ITAT. The learned ITAT had also set aside the order of penalty. Aggrieved thereby, the present Appeal has been filed by the Revenue.

5. The questions initially projected by the Department in the Memorandum of Appeal did not appear to us as “substantial questions of law” far-less, those arising in this Appeal. As such, during admission hearing of the Appeal held on 27th August, 2026, this Court had granted time to the learned counsel for the

Appellant to reformulate the substantial questions of law. Today when the matter is called out, Mr. Ashok Kotangle, learned counsel appearing for the Appellant-Revenue has tendered the following re-formulated substantial questions of law, under his signature, which, according to the learned counsel, would arise for consideration in the present proceeding:-

“Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in deleting the penalty imposed under section 271(1)(c) of the Income-tax Act, 1961, without properly appreciating that the assessee had furnished particulars which resulted in determination of income contrary to the provisions of the Act?

OR

Whether the Tribunal erred in law in holding that the mere fact that the assessee's claim was disclosed in the return of income was sufficient to absolve the assessee from liability under section 271(1)(c), without examining whether the particulars furnished in support of such claim were legally and factually accurate?

OR

Whether, on the facts and circumstances of the case, the Tribunal was justified in treating the impugned claim as a bona fide claim merely because the claim was made in the return of income, when the claim was ultimately found to be inadmissible under the express provisions of the Income-tax Act?

OR

Whether the Tribunal was correct in law in deleting the penalty without recording a finding that the explanation furnished by the assessee satisfied the requirements of section 271(1)(c) read with Explanation 1 thereto, and that the assessee had substantiated such explanation and established its bona-fides?

OR

Whether the Tribunal erred in law in failing to distinguish between a case where a mere legal claim is rejected and a case where the particulars furnished by the assessee lead to an impermissible claim resulting in concealment of income or furnishing of inaccurate particulars of income?"

6. As per the projection made by the learned counsel for the Appellant and in view of use of the conjunction "or" separating the five questions from one another, it appeared to us that according to the Appellant, only one of those five questions would arise for consideration in the present Appeal. However, it is not clear from his submission, as to which of the five questions, according to the learned Departmental counsel, would arise in Appeal.

7. This Court is conscious of the fact that at the stage of admission hearing, a liberal construction of the projected substantial questions of law is required to be adopted by the Court. However, purely factual controversy cannot be treated as a substantial question of law. A substantial question of law may also

pertain to the facts and circumstances of a particular case. However, unless it is projected as a question of law having a substantial bearing in the outcome of the Appeal, the same cannot be considered in an Appeal under Section 260A of the Act of 1961. It is to be borne in mind that Section 260A does not confer general appellate jurisdiction upon the High Court so as to entertain Appeals in a routine manner, re-appreciate evidence or to substitute its own view, for the concurrent finding arrived at by the forums below on the questions of fact. A legal issue, merely projecting a proposition of law, would not amount to “substantial question of law” unless it gives rise to a question not settled by an earlier decision of the Court and such legal question has a material bearing in the outcome of the Appeal.

8. The language employed in Section 260A of the Act of 1961 is clear and unambiguous. According to Section 260A, this Court would have the jurisdiction to entertain an Appeal under Section 260A, only if it is convinced that there is/are substantial question(s) of law which arise in the Appeal.

9. What would amount to substantial questions of law has been elaborately dealt with in a number of decisions of the Hon’ble

Supreme Court. The expression “substantial question of law”, though not defined in the Act of 1961, has received a settled meaning through a long line of judicial precedents. In *Vijay Kumar Talwar v. CIT reported in (2011)1 SCC 673*, the Hon’ble Supreme Court, while referring to the Constitution Bench judgment in *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. reported in AIR 1962 SC 1314*, has laid down the test to be applied in determining whether a question of law is substantial or not. The relevant portion reads thus:-

“20. In *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* Reported in AIR 1962 SC 1314, a Constitution Bench of this Court, while explaining the import of the said expression, observed that:

“6. ... 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.”

21. Similarly, in *Santosh Hazari v. Purushottam Tiwari* reported in AIR 1962 SC 1314, a three-Judge Bench of this Court observed that:

“14. 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, insofar as the rights of the parties before it are concerned. To be a question of law ‘involved 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. In *Hero Vinoth v. Seshammal* reported in (2006) 5 SCC 545, this Court has observed that:

“(iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized 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.”

10. After a careful examination of the questions of law, which were originally formulated and/or had been subsequently reformulated by the Appellant’s counsel, we find that none of those are substantial questions of law arising in the present Appeal. As a matter of fact, it appears to us that the Appellant has dressed up the legal objections to the judgment and order of the learned Tribunal and projected them as substantial questions of law, which recourse, in our considered view, was clearly impermissible under the law.

11. It must be noted herein that there may be several legitimate grounds including numerous legal objections that can be taken against a judgment of the Tribunal. However, such grounds/legal objections must raise questions of general public importance which have not been decided either by the Supreme Court or the jurisdictional High Court in order to partake the character of “substantial question of law”.

12. From an examination of the material placed before us, we are of the view that the questions so formulated by the learned Departmental counsel does not fulfill the threshold requirement of Section 260A of the Act of 1961 permitting this Court to admit the Appeal. We also find that there is/are no other substantial questions of law which would arise for consideration by this Court in the present Appeal.

13. Consequently, the Appeal stands dismissed.

(GAUTAM A. ANKHAD, J.)

(SUMAN SHYAM, J.)