

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

Tax Case Appeal No.302 of 2017

Principal Commissioner of Income Tax 4,
No.121, Nungambakkam High Road,
Chennai-600 034. .. Appellant

Vs

M/s.Marg Limited
Marg Axis, 4/318
Rajiv Gandhi Salai, Kottivakkam
Chennai- 600 041
PAN: ACC CM 8770 G .. Respondent

Tax Case Appeal is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 25th November 2016 in ITA No.1151/Mds/2016.

against the order of the Commissioner of Income Tax (Appeals) 8 dated 29.02.2016 in G.I.NO./PA NO.AACCM8770G in assessment year 2012-13.

against the office of the Deputy Commissioner of income tax corporato circle 4 (1) Chennai dated 31.3.0215 in assessment year 2012-2013.

For Appellant : Mr.Karthik Ranganathan

JUDGMENT

The Hon'ble Chief Justice and M.Sundar, J.

This appeal to the High Court by the Principal Commissioner of Income Tax 4, Chennai (hereinafter referred to as 'Revenue' for the sake of brevity) is under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act' for the sake of brevity)

2.Brief facts that are essential for appreciating the controversy / issues are set out under the caption 'Factual Matrix'.

3 FACTUAL MATRIX :

3(a) The Assessment Year, which is the subject matter of this appeal, is 2012-13 (hereinafter referred to as 'said Assessment Year' for the sake of brevity). The sole respondent before us, namely Marg Limited is the Assessee and is hereinafter referred to as 'assessee' for the sake of brevity, clarity and convenience.

3(b) Assessee filed return of Income for said Assessment Year electronically on 01.12.2012. Revenue selected the case for scrutiny. On statutory notice being issued, the Assessee filed initial details.

3(c) To be noted, the Assessee is a public limited company engaged in the business of civil construction and related services.

3(d) As stated supra, the case of the Assessee for the said Assessment Year was selected for scrutiny and ultimately Assessment under Section 143(3) of the IT Act was completed on 31.03.2015.

3(e) On completion of Assessment as aforesaid for the said Assessment Year, two main aspects relevant to this case that emerge from the assessment order are to be noted and they are follows:

i) Assessing Officer (hereinafter referred to as 'AO' for brevity) added an estimated income of Rs.21,40,00,000/- for certain projects;

ii) Assessing Officer disallowed an amount of Rs.2,61,96,790/- under Section 14A of the IT Act;

3(f) Therefore, the issues involved in the order of the AO are addition of estimated income and dis-allowance of certain amounts under Section 14A of the IT Act.

3(g) Aggrieved by the order of the AO (order dated 31.03.2015), the Assessee preferred statutory appeal to the Commissioner of Income Tax (Appeals)-8, Chennai (hereinafter referred to as CIT (A) for brevity) by way of appeal being ITA No.168/2015-16.

3(h) After a detailed hearing, CIT (A) confirmed the disallowance of an Rs.2,61,96,790/- made by the AO under Section 14A of the IT Act. To be noted the Assessee accepted this order of the CIT(A) and gave legal quietus to the same.

3(i) Therefore, on the above said two issues in the order of the AO, one was put to rest. The only other surviving issue is addition of Rs.21,40,00,000/- on estimate basis for certain projects as this was deleted by CIT (A).

3(j) Aggrieved by deletion of estimated income, Revenue filed a statutory appeal before the Income Tax Appellate Tribunal, Madras 'C' Bench (hereinafter referred to as 'ITAT' for the sake of brevity). The appeal before ITAT is ITA No.1151/Mds/2016.

3(k) ITAT, confirmed the order of CIT (A) and held that deletion made by CIT (A) is correct.

3(l) Aggrieved and claiming that substantial questions of law arise, Revenue has preferred the instant Statutory Appeal before us under Section 260-A of the IT Act.

4. We now proceed to merits of the matter under the caption 'Discussion' infra:

DISCUSSION

4(a) As stated supra, the Assessee is a Public Limited Company engaged in the business of civil construction and related services.

4(b) AO had made addition to the income returned by the Assessee by estimating gross profit. The power to make such addition on estimate basis is available to the AO under Section 144 of the IT Act. Section 145 enables the AO to invoke the power under Section 144 when certain conditions adumbrated in Sub-section (3) of Section 145 are satisfied. Therefore, it becomes necessary and useful to extract Section 145(3) of the IT Act, which reads as follows:

"145(3)Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in Section 144."

4(c) Therefore, it is sine qua non that the AO to come to a conclusion that the Books of Accounts maintained by the Assessee are incorrect, incomplete or unreliable and reject the Books of Accounts before the proceeding to make his own assessment. In the instant case, there is no reference in the Assessment Order of the AO regarding rejection of Books of Accounts.

4(d) Therefore, there is nothing on record to show that the AO came to the conclusion that the Books of Accounts maintained by the Assessee are incorrect, incomplete, unreliable and as a consequence rejected the Books of Accounts.

4(e) Therefore, after setting out the plethora of case laws on this point, CIT (A) held that the accounts of the Assessee cannot be rejected merely based on the perception of the AO that the Assessee has declared low profit margin for certain projects when Books of Accounts have not been rejected. Considering the factual position that there is no reference in the Assessment Order made by the AO regarding the Books of Accounts (this has been fairly admitted by the Revenue before ITAT), we are not, therefore, labouring through the labyrinth of case laws relied on by CIT(A). The relevant portion pertaining to admission in this regard by the Revenue is at Paragraph 4 of the order of ITAT and the same reads as follows:

"4. On a query from the bench, whether the assessing officer rejected the books of account during the course of assessment proceedings, the learned department representative very fairly submitted that there is no reference in the assessment order in the rejection of books of account....."

4(f) As this factual position has been admitted, ITAT, dismissed the appeal of the Revenue by holding that profits of an Assessee cannot be estimated without rejecting the books of account.

4(g) ITAT has expressed its considered opinion that only when an assessee is not maintaining Books of Accounts properly and the correct income cannot be estimated on the basis of the Books of Accounts, the Books of Accounts can be rejected. ITAT has gone on to hold that the AO can estimate profit only thereafter.

4(h) It is also seen that the Assessee is doing civil construction work for residential projects, many projects for the Government, Government related agencies and some for Non-Governmental Organizations (NGOs) across the country. Considering this spectrum, there can be certainly low profit margins in projects for Government and Government related agencies. So can be the case for NGOs.

4(i) We now examine two questions proposed by Revenue before us as Substantial Questions of Law in this appeal. They are as follows:

"1. Whether on the facts and in the circumstances of the case and in law, the ITAT was right in deleting the impugned addition on estimation of profit even though it is established that the assessee is definitely showing low rate of profits in comparison to the regular civil construction and hence profit can be estimated by the Assessing Officer in the instant case in the absence of regular bills and vouchers?

2. Whether on the facts and circumstances of the case and in law, the ITAT was correct and justified in not following the Hon'ble Apex Court's decision in the case of CIT Vs. British Paints India Ltd., 188 ITR 44 (SC), wherein it is held that even if the assessee had adopted a regular systems of accounting it was the duty of the AO u/s.145 to consider whether the correct profits and gains could be deduced from the accounts so maintained by the assessee?

4(j) We examine whether the aforesaid two questions would qualify as substantial questions of law? Hon'ble Supreme Court of India in the Sir Chunilal V. Mehta & Sons Ltd. vs Century Spg. & Mfg. Co. Ltd. [AIR 1962 SC 1314], while agreeing with and approving a Full Bench Judgment of this Court in Rimmalapudi Subba Rao vs Noony Veeraju And Ors reported in AIR 1951 Mad 969 laid down principles as to when a question of law becomes a substantial question of law at all.

4(k) Thereafter, with regard to 'substantial questions of law', tests were laid down by the Hon'ble Supreme Court of India for finding out whether a given set of questions of law are mere questions of law or substantial questions of law and the same are found in Hero Vinoth Vs. Seshammal [(2006) 5 SCC 545] case. The ratio / tests laid down by the Supreme Court is found in paragraphs 21 to 24 of the said judgment, which read as follows :

"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."

4(1) We also usefully refer to the judgment of the Supreme Court reported in M. Janardhana Rao Vs. Joint Commissioner of Income Tax [2005 273 ITR 50 (SC)] wherein and whereby the Hon'ble Supreme Court of India held that the principles contemplated under Section 100 of the Code of Civil Procedure (hereinafter referred to as CPC for brevity) would apply to 260-A of IT Act too.

4(m) We applied the above tests / principles laid down by the Hon'ble Supreme Court of India to the two questions proposed by the revenue in the instant case, more so in the light of the factual matrix of the case.

4(n) It becomes obvious that there is no legal position which is debatable. Equally, no settled position of law has been misapplied by the authorities in answering the material questions either. Therefore, we have no hesitation whatsoever in coming to the conclusion that no substantial question of law arises in the instant appeal. As stated supra, we have tested the questions proposed by Revenue in the backdrop of the factual matrix of the instant case. As a matter of abundant caution, we also applied our minds independently and

examined / searched if any other substantial question of law arises, but in vain.

5 CONCLUSION :

Owing to all that have been stated supra, there is no merit whatsoever in the appeal filed by the Revenue as the addition of income on estimate basis for certain projects has admittedly / concededly (as admitted / conceded by the Revenue before ITAT) been done without scrutiny and without rejecting the Books of Accounts. Equally, no substantial question of law arises.

6 DECISION :

Owing to and in the light of all that have been stated supra, the appeal by the Revenue in T.C.A.No.302 of 2017 is dismissed as bereft of merits and as one in which no substantial question of law arises for being entertained under Section 260-A of the IT Act. No costs as this Appeal is being dismissed at the admission stage.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gpa/vvk

To

1. The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2. The Commissioner of Income Tax Appeals
8 Rood NO.222, Ayakar Bhavan,
Mani Building II Floor No.121
Mahatma Gandhi Road, Nungambakkam,
Chennai 34.

+ 1 cc to Mr.Karthik Rangarajan, Advocate Sr.51139

T.C.A.No.302 of 2017

MG(CO)
EU 2.08.17