

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

Tax Case Appeal Nos.413 and 414 of 2017

and
C.M.P.No.10330 of 2017 in
T.C.A.No.414 of 2017

Janardhanam Balaji ... Appellant in both appeals/
Appellant

Vs.

The Additional Commissioner of Income Tax,
Kancheepuram Range,
Kancheepuram. ... Respondent in both appeals/
Respondent

Tax Case Appeals are preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 7th April, 2017 in ITA Nos.3011/MDS/2016 and 3077/MDS/2016 respectively against the Order of the Commissioner of Income Tax (Appeals)-7, Chennai dated (1) 29.09.2016 and made in I.T.A.No.105/CIT(A)-7/2015-16 and (2) 18.10.2016 and made in I.T.A.No.104/CIT(A)-7/2015-16 respectively against the Order of the Additional Commissioner of Income Tax, Kancheepuram Range, Kancheepuram, dated 29.02.2016 and made in PAN No.AIUPB4446K/2012-13 against the Order of the Income Tax Officer, Ward-2(I/C), Tiruvallur, Kancheepuram, dated 13.03.2015 and made in PAN No.AIUPB4446K for the assessment year 2012-13.

For Appellant
in both Appeals : Mr.G.Baskar

For Respondent
in both Appeals : Mr.Karthick Ranganathan

COMMON JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

Both these appeals are against a judgment and order dated 7th April 2017 passed by the Income Tax Appellate Tribunal, rejecting the appeals being I.T.A.Nos.3011 and 3077/Mds/2016 filed by the appellant assessee against orders dated 29th September 2016 and 18th October 2016 of the learned Commissioner of Income Tax (Appeals)-7, Chennai confirming levy of penalty under Sections 271E and 271D of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act') on the appellant assessee, in respect of the assessment year 2012-2013.

2 The appellant Assessee was running a petrol pump and had filed return of income disclosing income of Rs.5,53,851.00. In course of assessment proceedings, the learned Assessing Officer noted that the Assessee had been maintaining a book, namely, Sundry Debtors ledger, which reflected cash payments and cash receipts from various parties. When the assessment was completed, certain disallowances were made in respect of interest payment under Section 40(a)(ia) of the IT Act, business promotion expenses of Rs.80,153.00 and claim under Chapter VIA for Rs.1,04,864.00.

3 After assessment, the Assessment Officer directed that penalty proceedings under Section 271(1)(c) of the IT Act be initiated separately. Notice under Section 274 of the IT Act was issued to the Assessee on 31st August, 2015. Penalty was levied, as it was found that there had been violation of Sections 269SS and 269T of the IT Act by reason of receipt of cash loan and repayment of loan in cash during the same assessment year. Penalty of Rs.14,40,000.00 was imposed in respect of loan received in cash under Section 271D of the IT Act and further penalty of Rs.14,40,000.00 was imposed under Section 271E of the IT Act in respect of the loan amount repaid in cash.

4 The Assessee appealed against the orders of the Additional Commissioner of Income Tax imposing penalty. The appeals were, however, rejected by the Commissioner of Income Tax (Appeals) by two separate orders dated 29th September 2016 and 18th October 2016 in ITA No.105/CIT(A)-7/2015-16 and ITA No.104/CIT(A)-7/2015-16 respectively. Paragraph No.6 of the order of the Commissioner of Income Tax (Appeals) in ITA No.105/CIT(A)-7/2015-16, which contains a summary of reasons for the decision in the two appeals, is set out herein below :

"6. Penalty under Section 271D of the Act is imposed for violation of the provisions of Section 269SS of the Act. Section 269SS of the Act provides

that any loan or deposit shall not be taken or accepted from any other person otherwise than by an account payee cheque or account payee bank draft if,

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid and the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more :

Thus it is clear that no person can accept any loan or deposit of Rs.20,000/- or more otherwise than by way of an account payee cheque or an account payee draft. The limit of Rs.20,000/- will also apply to a case even if on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from such depositor is remaining unpaid and such unpaid amount along with the loan or deposit to be accepted, exceeds the aforesaid limit. Similarly, penalty under Section 271E of the Act is imposed for violation of the provisions of Section 269T of the Act. Section 269T of the Act provides that any branch of a banking company or a cooperative society, firm or other person shall not repay any loan or deposit.

Otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person, who has made the loan or deposit, if

(1) The amount of the loan or deposit together with interest is Rs.20,000/- or more, or

(2) The aggregate amount of loans or deposits held by such person, either in his own name or jointly with other person on the date of such repayment together with interest, is Rs.20,000/- or more.

The contention of the Authorized Representative that the each of the transaction and repayment was below Rs.20,000/- and hence do not attract the mischief of the provisions of Section 269SS and Section 269T respectively is not a valid proposition. The Act mentions not just the 'amount of such loan or deposit', but also the 'aggregate amount of such loan or deposit'. Hence, in my considered view the provisions of Section 269SS and Section 269T of the Act clearly get attracted at the threshold level."

5 Learned Commissioner of Income Tax (Appeals) arrived at the factual finding that provisions of Sections 269SS and 269T were clearly attracted as the contention of the representative of the Assessee that each of the transaction and repayment were below Rs.20,000.00 was unsubstantiated. The Assessee appealed before the Tribunal and the appeals have also been dismissed holding that violation of Sections 269SS and 269T of the IT Act attract penalty. The imposition of penalty has been upheld. The findings are factual.

6 Section 260A(1) of the IT Act provides as follows :

"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."

7 An appeal lies under Section 260-A of the IT 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.

8 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.

9 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.

10 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 "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. (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."

11 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.

12 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 Assessing Officer, Appellate Commissioner and the Appellate Tribunal. Hence, both these appeals cannot be entertained.

13 Both Tax Case Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vvk

To

- 1.The Assistant Registrar
Income Tax Appellate Tribunal,
'D' Bench, Chennai.
- 2.The Commissioner of Income Tax (Appeals)-7,
Room No.221, 121 M.G.Road,
Nungambakkam, Chennai-600 034.
- 3.The Additional Commissioner of Income Tax,
Kancheepuram Range, No.96, M.M.Avenue,
Kancheepuram-631 501.
- 4.The Income Tax Officer,
Ward-2, Tiruvallur,
No.96, M.M.Avenue, Kancheepuram-631 501

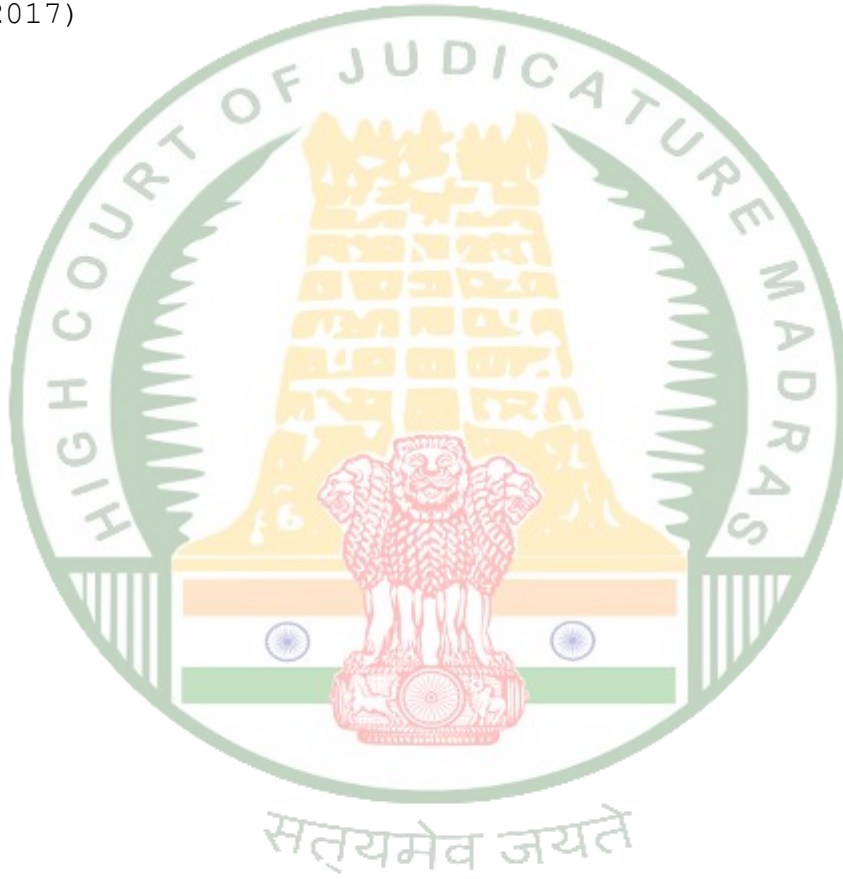
5.The Secretary,
Central Board of Direct Taxes,
New Delhi.

+1cc to Mr.G.Baskar, Advocate Sr. 55359

+2cc to Mr.Karthick Ranganathan, Advocate Sr. 55395 & 55396

T.C.A.Nos.413 and 414 of 2017

GR(CO)
VR(11/09/2017)



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