

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

T.C.A.No.429 of 2017

The Commissioner of Income tax,
Chennai.

.. Appellant

-vs-

Late Dr.N.Rangabashyam
Rep. By wife & L/r
Mrs.R.Chitralekha.

.. Respondents

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 10.11.2016 passed in I.T.A.No.1337/Mds/2016, in respect of the Assessment Year 2012-13 against the order dated 23.3.2016 of the Commissioner of Income Tax (Appeals) in ITA No.13/CIT(A)-2/2015-16 for the Assessment year 2012-13, against the order dated 30.03.2015 of the Deputy Commissioner of Income Tax, Non Corporate Circle-II, Chennai for the assessment year 2012-2013 in PAN.NO.GIR.NO.AAPR.6056P.

For Appellant : Mr.T.Ravikumar

J U D G M E N T

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

This appeal is against the judgment and order dated 10.11.2016 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dismissing the appeal being I.T.A.No.1337/Mds/2016 filed by the Deputy Commissioner of Income-tax, Non-Corporate Circle 2, Chennai, in relation to the Assessment Year 2012-13 and affirming the order dated 23.03.2016 passed by the Commissioner of Income-Tax (Appeals)-2.

2.The assessee, a Gastroenterologist, since deceased, now represented by his wife and legal heir, Smt.R.Chitralekha, had filed a return of income for the Assessment Year 2012-13 electronically on 28.09.2012 declaring a total income of Rs.2,13,43,800/-.

3.The assessee had sold property measuring 4.91 acres of vacant land at Krishnankaranai Village, Chengalpet Taluk, for a consideration of Rs.9,76,76,000/-, vide Document No.13202/2011, which was registered in the Office of the Sub Registrar, Tiruporur. It is stated that as per the guidelines of the sub-registration office, the market value of the property was estimated at Rs.11,05,38,000/-.

4.The assessee claimed that the entire sale consideration was exempt under Section 2 (14) of the Income Tax Act, 1961, as the lands sold were agricultural lands. The assessee claimed that the lands in question not being capital asset, no capital gains tax was payable on such sale.

5.In the course of assessment proceedings, the Assessing Officer found that the assessee had acquired the lands in between the years 1985 to 1988, but the assessee had not returned any agricultural income from the Assessment years 2006-07 to 2011-12. The Assessing Officer, thus, presumed that the assessee was not carrying on any agricultural activity in the land and concluded that the lands were not agricultural lands.

6.In arriving at the conclusion that the lands sold were not agricultural lands, the Assessing Officer took note of the phenomenal rise in the value of the lands and also the fact that the assessee had sold the lands to a real estate developer.

7.Being aggrieved by the order of assessment, the assessee appealed to the Commissioner of Income-Tax (Appeals), [in short 'CIT(A)']. The CIT (A) allowed the appeal of the assessee holding that the lands in question transferred by the assessee were agricultural lands and that there was sufficient evidence to prove that the lands were used for agricultural purposes.

8.Being aggrieved by the order of the CIT(A), the Department filed an appeal before the Appellate Tribunal. The appeal of the Department has been dismissed by the order sought to be appealed against.

9.The CIT (A) had concluded that it was a fact that the lands in question had been sold for a high price of Rs.9,76,76,000/-. However, the fact remained that agricultural activities, i.e., cultivation of trees and vegetables, had actually been carried out in the lands as evidenced by the

'adangal' copies and the fact that positive income/loss from the said activities had been reflected in the capital account of the assessee and also reflected in the return of income of the assessee, duly supported by the report of the Departmental Valuation Officer (DVO) and photographs taken by the DVO during inspection. Further, the conditions laid down in Section 2 (14) of the Income Tax Act, 1961, in relation to distance from the nearest Municipality/Municipal Corporation/Cantonment Board and in relation to population were also fulfilled.

10. The learned Appellate Tribunal, after hearing the rival submissions and perusing the materials including the copy of the sale deed, copy of the revenue records, the survey report, photographs taken by the DVO during survey, etc., arrived at the finding that the lands in question were agricultural lands within the meaning of Section 2 (14) of the Income-Tax Act and accordingly, dismissed the appeal of the Revenue.

11. Learned counsel appearing on behalf of the Revenue has, in support of the appeal, cited the judgment of the Supreme Court in State of UP vs. Nand Kumar Aggarwal and Ors., reported in AIR 1998 SC 473, to argue that the fact that the lands had been entered in the revenue records as agricultural lands or so shown in the Master Plan would not in itself make the lands agricultural lands.

12. The judgment of the Supreme Court in Nand Kumar Aggarwal's case (supra) was rendered in the context of the definition of 'urban land' in the Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as 'the ULCAR Act'). Under the definition of 'urban land' in the ULCAR Act, urban land included any land situated within the limits of an urban agglomeration as specified, but did not include any such land which was mainly used for the purpose of agriculture. However, for the purpose of the aforesaid clause, the expression 'agriculture' included horticulture, but did not include raising of crops, dairy farming, poultry farming, breeding of live-stock and such cultivation, or the growing of such plant as might be prescribed. In the context of the ULCAR Act, the Supreme Court found that operating of a 'Bhatta' could not be an agricultural purpose. Even though the land had been entered in the revenue records as agriculture land, such land would vest in the State.

13. Capital Asset has specifically been defined in Section 2 (14) of the Income Tax Act, 1961 to exclude agricultural land. The definition is extracted hereinbelow for convenience:

"2. In this Act, unless the context otherwise requires, -
.....

(14) "capital asset" means -

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include-

(i)

(ii)

(iii) "agricultural land" in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or

(b) in any area within the distance, measured aerially, -

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation. - For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

..... "

14.The CIT (A) as also the learned Tribunal have duly considered the definition of agricultural land as contained in the Income Tax Act, 1961, considered the evidence on record and

arrived at the factual finding that the lands sold by the assessee were agricultural lands.

15. Learned counsel appearing on behalf of the Revenue also cited the judgment of the Supreme Court in Smt. Sarifabibi Mohmed Ibrahim & Ors. vs. Commissioner of Income Tax, reported in (1993) 204 ITR 0631. As held by the Supreme Court in Sarifabibi Mohmed Ibrahim (supra), whether a land is an agricultural land or not, is essentially a question of fact. Several tests have been evolved in the decisions of the Supreme Court and the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them - a process of evaluation where inference has to be drawn on a cumulative consideration of all the relevant facts.

16. In the instant case, the Appellate Tribunal has concurred with the factual finding arrived at by the CIT (A) and affirmed the decision of the CIT (A). The decision is based on some materials. It cannot be said that the decision is perverse. It is not for this Court to re-analyse the evidence or decide whether the evidence on record was sufficient to justify the finding.

17. Right of appeal is not automatic. Right of appeal is conferred by Statute. If the right of appeal conferred by the Statute is limited to cases where there is a substantial question of law, this Court cannot sit in appeal over factual findings by re-weighing and re-analysing the evidence and materials on record. It would be relevant to refer to Section 260-A of the said Act, which provides as hereunder:

Appeal to High Court.

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.

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner of Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;

(b) omitted.

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

18. What constitutes a substantial question of law has extensively been discussed and explained by the Supreme Court in *Sir Chunilal V. Mehta & Sons Ltd. vs Century Spg. & Mfg. Co. Ltd.* [AIR 1962 SC 1314], where the Supreme Court approved the decision of the Full Bench of this Court in *Rimmalapudi Subba Rao vs Noony Veeraju And Ors* reported in AIR 1951 Mad 969.

19. It is now well settled that the principles for determination of existence of substantial question of law as laid down in *Sir Chunilal V. Mehta's* case (supra) in the context of second appeals under the Civil Procedure Code would apply to

appeals under Section 260 A of the Income-Tax Act. Reference may, in this context, be made to the judgment of the Supreme Court in M.Janardhana Rao Vs. Joint Commissioner of Income Tax reported in (2005) 273 ITR 50 (SC).

20.The judgment of the Supreme Court inter alia in Sir Chunilal V.Mehta's case (supra) was followed by the Supreme Court in its subsequent decision in Hero Vinoth Vs. Seshammal [(2006) 5 SCC 545] (para 24), where the Supreme Court summarized the principles and tests for deciding whether the questions involved in the appeal were substantial questions of law. The Supreme Court held :

"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."

21.The questions raised in this appeal do not meet the tests laid down by the Supreme Court for holding that the questions are substantial questions of law. We are constrained to hold that there is no question of law, let alone any substantial question of law, involved in this appeal.

22.This Tax Case appeal is, thus, not entertained and the same is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sra
To

- 1.The Registrar,
Income-Tax Appellate Tribunal
'B' Bench, Chennai.
 - 2.The Commissioner of Income Tax
(Appeals)-2, 121, M.G.Road,
Nungambakkam, Chennai-34.
 - 3.The Deputy Commissioner of Income-Tax,
Non Corporate Circle-II, Chennai.
- + 1 cc to Mr.T. Ravikumar, Advocate SR.55394

T.C.(A).429 of 2017

SVI (CO)
EU 30.08.17