IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

T.C. (A) No.472 of 2017

Commissioner of Income Tax,
Puducherry. .. Appellant

-vs-

Latha Rajee Mathew .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 18.03.2016 passed in I.T.A.No.1540/Mds/2015 on the file of the Income Tax Appellate Tribunal, "D" Bench, Chennai, in respect of Assessment Year 2011-12 against the order of the Commissioner of Income Tax (Appeal) Puducherry dated 30.3.2015 in ITA.No.585/CIT(A)-Pdy/13-14 against the order under section 143(3) of the Income tax Act dated 21.10.2013 passed by the Income Tax Officer, Ward-I(1), Puducherry for PAN.No.BGJP M3083K for the Assessment year 2011-2012.

For Appellant : Mr.S.Rajesh
for Mr.T.R.Senthil Kumar

J U D G M E N T

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

This appeal of the Revenue is directed against an order dated 18.03.2016 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dismissing I.T.A.No.1540/Mds/2015 filed by the Revenue against an order of the Commissioner of Income-Tax (Appeals) dated 30.03.2015 setting aside the addition of Rs.93,11,000/-, as undisclosed income of the respondent-assessee, during the Assessment Year 2011-12.

2.In the course of assessment, the Assessing Officer found that there had been cash deposit of Rs.30,61,000/- in the Pondicherry State Co-operative Bank Ltd., in the name of the respondent-assessee and another cash deposit of Rs.62,50,000/- in the Indian Overseas Bank account of the respondent-assessee during the Assessment Year 2011-12 corresponding to the Previous Year 2010-11.

3.It was the case of the respondent-assessee that she had received a sum of Rs.60,00,000/- from her mother as gift. The money was given by the respondent-assessee's mother to the respondent-assessee for admission of her son, Rufus Mathew Rajee in a private medical college. The assessee also claimed that she has received a sum of Rs.30,61,000/- from her husband, Shri.Khalur Rajeev.

4.It appears that the Assessing Officer proceeded to treat the aforesaid gift amounts received by the respondent-assessee from her mother and her husband respectively as undisclosed income of the respondent-assessee. The reasoning for the addition was that the respondent-assessee had not been able to explain the source from which the respondent-assessee's husband and the respondent-assessee's mother gave the money to the respondent-assessee.

5.Aggrieved by the addition, the respondent-assessee filed an appeal, being I.T.A.No.585/CIT(A)-Pdy/13-14 before the Commissioner of Income Tax (Appeals), Puducherry. By an order dated 30.03.2015, the learned Commissioner of Income Tax (Appeals) allowed the appeal of the respondent-assessee holding that the entire cash deposit of Rs.93,11,000/- had properly been explained and directed the Assessing Officer to delete the entire addition. As stated above, the appeal of the Revenue before the Income Tax Appellate Tribunal has been dismissed by the order under appeal before us.

6.It appears that both the Commissioner of Income Tax (Appeals) and the learned Tribunal, in effect and substance, arrived at the factual finding that the respondent-assessee's husband and the respondent-assessee's mother both had sufficient funds for giving money to the respondent-assessee.

7.So far as the respondent-assessee's mother, Smt.S.Omana Nair, is concerned, there is a clear factual finding that she had sold her land and had enough fund to deposit into her bank account. This is evident from the remand report relied upon by the Commissioner of Income Tax (Appeals).

8.Even, so far as the husband of the respondent-assessee is concerned, there is a factual finding that he had money in his accounts. May be the source was unexplained. It is, however, doubtful whether the gift could have been deemed to have been income of the respondent-assessee only because the respondent-assessee could not establish the source of income of the donors.

9.The learned Tribunal has concurred with the factual finding of the learned Commissioner of Income Tax (Appeals) that the donors in question had the funds to make a gift to the respondent-assessee for the purpose of admission of her son in a medical college.

10.Section 260A of the Income Tax Act, 1961, provides as follows:

> "Section 260A. Appeal to High Court.
> (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 or 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) [***];
> (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."

11.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 these appeals much less any substantial question of law.

12.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.

13.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.

14.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 "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."

15.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.

16.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 for this Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal.

17.As observed above, the learned Tribunal has, in this case, arrived at the factual finding that the respondent-assessee had sufficiently been able to explain that the sum of Rs.93,11,000/- was received by her by way of gift from her mother and her husband respectively. The materials on record reveal that the gift from the mother was to fund for admission of her grand son to a private medical college.

18.In our view, there is no question of law involved. It is also doubtful whether there is any factual infirmity in the order under appeal.

19.This Tax Case Appeal is, therefore, not entertained and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2.The Commissioner of Income-Tax
(Appeals), Puducherry.

3.The Income Tax Officer, Ward-I(1),
Puducherry.

+1cc to M/s.T.R.Senthilkumar, Advocate SR.No.66122

T.C.A.No.472 of 2017

GMI(CO)
sm:29.11.2017