IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

T.C. (A) No.761 of 2017

The Commissioner of Income Tax
Chennai. .. Appellant

Vs

Venkateswara Hospital
No.36A, Chamiers Road
Nandanam, Chennai – 600 035. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 17.3.2017 made in I.T.A.No.1769/Mds/2016.

For Appellant : Mr.T.Ravikumar
Standing Counsel

JUDGMENT

(Delivered by the *Hon'ble Chief Justice*)

This appeal is against an order dated 17.3.2017 of the Income Tax Appellate Tribunal 'A' Bench, Chennai, allowing the appeal of the assessee, being I.T.A.No.1769/MDS/2016, against the order dated 18.3.2006 of the Appellate Commissioner dismissing the appeal, being I.T.A.No.224/CIT(A)-2/2014-15, of the assessee against an order of assessment dated 29.1.2015 pertaining to the assessment year 2012-2013.

2. The assessee, a registered firm, was carrying on the business of running a nursing home and pharmacy. The assessee filed its return of income for the assessment year 2012-2013 on 29.9.2012 showing income of Rs.2,91,81,370/-.

3. The case of the assessee was selected for scrutiny and notice was issued under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). It appears that during the relevant previous year, the assessee had sold 2 acres and 78 cents of agricultural land at Thirutheri Village, Kattangalathur Panchayat for a sum of Rs.8,01,00,000/- to one K.Dhanasekaran. The assessee claimed exemption from capital gain arising from sale of land on the ground that it was agricultural land. The assessee furnished certificate of the Village Officer certifying that the land was situated beyond 8 kms. from the limits of the municipality and the population was less than 10000.

4. It transpires that the assessee had not utilized the land for agricultural purpose and had shown income from business in the return of income filed for the assessment years 2006-2007 to 2012-2013. The income shown for the years in question are delineated in the table given herein below:

Assessment Year	***Income from business/profession***
2006-07	Rs.97,49,120/-
2007-08	Rs.1,56,30,293/-
2008-09	Rs.1,75,37,611/-
2009-10	Rs.86,69,050/-
2010-11	Rs.65,26,800/-
2011-12	Rs.1,08,94,797/-
2012-13	Rs.2,93,81,367/-

5. The Revenue has contended that entry of land in the revenue records as agricultural land would not, in itself, mean that the land was being used for the purpose of agriculture.

6. The question of whether a plot of land is in effect and in substance agricultural land or non agricultural land is a matter of fact. Of course, by reason of deeming provisions contained in law, certain principles may have to be applied for determination of whether a plot

of land is agricultural land or non agricultural land.

7. There can be no doubt that registration simpliciter of a plot of land as agricultural land would not in itself mean that the land was being used for the purpose of agriculture.

8. The learned Tribunal held "*Therefore, the ratio of case laws relied upon by the AO as well as Ld.CIT(A) are not applicable in the assessee's case. The Hon'ble Jurisdictional High Court in the case of Mrs.Sakunthala Veachalam & Mrs.Vanitha Manickavasagam Vs. ACIT (2014) 369 ITR 558 (Mad) held that merely because of the adjacent land divided into Plots for sale not a reason that the land sold by the assessee were for the purpose of development of land. Records are showing that the lands are agricultural land, classified as dry land for which Kisthu has been paid and falls far exclusion from the definition of capital asset u/s.2(14) of Income Tax Act. The case laws relied upon by the assessee are squarely applicable in the assessee's case. Therefore, we hold that the land in question sold by the assessee was agricultural land and cannot be held as capital asset and no capital gains are chargeable and hence we set aside the orders of the lower authorities and the assessee's appeal is allowed.*"

9. The learned Tribunal arrived at the factual finding that the land in question sold by the assessee was agricultural land and could not be said to be capital asset.

10. 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.

11. 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.

12. 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***.

13. 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)***.

14. 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."

15. 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. That apart, the issues raised in this appeal are covered by a judgment and order of this Court in *The Commissioner of Income Tax v. Late Dr.N.Rangabashyam, MANU/TN/2523/2017 : CDJ 2017 MHC 5828*. We are constrained to hold that there is no question of law, let alone any substantial question of law, involved in this appeal.

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

(I.B., CJ.) (A.Q., J.)

23.01.2018

Index : No

Internet : Yes

sasi

To:

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

2. The Commissioner of Income Tax (Appeals)-2
   Chennai – 600 034.

3. The Deputy Commissioner of Income Tax
   Non-Corporate Circle-2
   Chennai.

THE HON'BLE CHIEF JUSTICE

AND

ABDUL QUDDHOSE,J.

(sasi)

T.C.(A) No.761 of 2017

23.1.2018