IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM

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

T.C.A.No.9 of 2018

Mr.J.Stephen .. Appellant/Appellant

vs

The Income Tax Officer,
Ward V (1),
Coimbatore. .. Respondent /Respondent

Prayer: Appeal filed under 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' (SMC) Bench, Chennai dated 01.11.2017 in I.T.A.No.3120/MDS/2016 against the order dated 29.06.2015 in ITA.NO.247/2011-12(A)-1 passed by Commissioner of Income Tax(Appellals)3, Coimbatore againt the assessment order dated 29.12.2011 made by Income Tax Officer, Ward(VI), Coimbatore.

For Appellant .. Mr.M.P.Senthil Kumar

* * * * *

JUDGMENT

(Delivered by Ms.Indira Banerjee, Hon'ble Chief Justice)

This appeal is against an order dated 01.11.2017 passed by the Income Tax Appellate Tribunal 'B' (SMC) Bench, Chennai in I.T.A.No.3120/MDS/2016, filed by the appellant assessee in respect of the assessment year 2009-2010, dismissing on the ground that the same was barred by delay of 72 days.

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

> “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 Chief Commissioner or the 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 Chief 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.”

3. An appeal lies to this Court from an order of the Appellate Tribunal when there is substantial question of law involved. There does not appear to be any question of law

involved in this appeal, not to speak of substantial question of law.

4. There can be no doubt that no hard and fast rule can be laid down in the matter of condonation of delay and the Courts should adopt a pragmatic approach in exercising their discretion on the facts of each case. The Court should keep in mind the principle that in construing the expression "sufficient cause", substantial justice is of prime importance. Sufficient cause should just be given a liberal construction. The proposition finds support in the judgment of the Supreme Court in Vedabai alias Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil reported in (2002) 253 ITR 798 (SC) and various other judgments. However, the Law of Limitation is also a valid law and the Court cannot give a complete go-by to the Law of Limitation. The approach might be pragmatic, but at the same time limitation cannot altogether be ignored.

5. Whether the cause for the delay in filing an appeal is "sufficient cause" to warrant condonation of the delay and admission of the appeal, is basically an issue of fact. It is doubtful whether such factual findings can be questioned by way of an appeal under Section 260A of the Income Tax Act, unless the findings are vitiated by perversity, which might give rise to a question of law.

6. Even in a case where an appeal was not entertained on the ground of limitation, if there was serious issue of law involved in the appeal, the Court might have considered that issue as an issue of law for entertaining an appeal under Section 260A of the Income Tax Act. However, even the findings of the Appellate Commissioner impugned before the Tribunal did not involve any substantial question of law.

7. In the instant case, the appellant assessee had filed his return of income for the assessment year 2009-2010 on 22.05.2009, declaring total income of Rs.4,40,330/-. The case was selected for scrutiny, after which assessment was completed and an assessment order was passed. The assessment order is extracted herein below.

> " The explanation of the cash deposits in IDBI was sought to which the representative stated that to avoid cash deposit tax in the M/s.Southerland Forex & Services (India) Private Ltd. in which the assessee is a Managing Director, the assessee had deposited cash into his account and transferred to the company. The sources of the cash deposits were not provided for were the proofs that these deposits were reflected in the company furnished. Therefore, the

total cash deposits of Rs.32,17,717/- is added as undisclosed cash investment.

The assessment is completed as under:

Total income returned	:	Rs.4,40,330/-
Add: As discussed	:	Rs.33,17,177/-
Total income assessed	:	Rs.37,57,510/-”

8. Being aggrieved by the assessment order, the appellant assessee appealed to the Commissioner of Income Tax (Appeals)-3, Coimbatore and the appeal was numbered as ITA.No.247/2011-12(A)-1. The appeal was dismissed by an order dated 29.06.2015.

9. The Appellate Commissioner found that the appellant assessee had, in his written submission, claimed that several customers approached the appellant assessee, the Managing Director of M/s.Southerland Forex & Services (India) Pvt. Ltd. for buying travellers' cheques. As per norms M/s.Southerland Forex & Services (India) Pvt. Ltd. cannot buy travellers cheques. Since the appellant assessee did not want to lose the customers, he received cheques and cash in his personal account and bought travellers cheques and made the same over to his customers. The appellant assessee claimed to have bought travellers cheques from other money changers. This is how cash deposits in his personal bank account statements had been explained. The appellant assessee also attributed bank deposits to loans allegedly obtained from his sister-in-law Mrs.Gnanagandhi.

10. After considering the submissions of the appellant assessee and on perusal of the assessment order, the Appellate Commissioner observed as under:

“7.0.. a) The assessee has deposited a sum of Rs.33,17,177/- in cash with IDBI Bank.

b) The assessee was not able to substantiate the source of this deposit before the Assessing Officer.

c) The assessee contended that Rs.21,25,407/- was given by the assessee's relative Mrs.Gnanagandhi on different dates in the following manner and the sources of the deposit of by Mrs.Gnanagandhi was sale of property for Rs.43,50,000/-.

d) The assessee was not able to produce the copy of the sale deed. Mere production of copy of agreement for sale is not sufficient to prove the source of deposit. Further Mrs.Gnanagandhi could have advanced these loans by way of cheque to Mr.Stephen. The entire amount has been advanced in various dates by cash which is not backed by any evidence.

7.1. As evidenced by the remand report the agreement is dated 18/8/2008. There are several deposits before the said date. Therefore, the amount received prior to 18/8/2008 cannot in any case linked to the sale of property. Further, even if there was a sale, the amount does not belong entirely to Mrs.Gnanagandhi. It will belong to her and three others.

7.2. In view of the above facts and circumstances, the assessee was not able to give any evidence in support of cash deposit in his bank account to the tune of Rs.33,17,177/- This will be treated as unexplained income of the assessee and the addition stands confirmed in the hands of the appellant."

11. The Appellate Commissioner found that the cash deposits were not explained and substantiated by cogent evidence. The entire loan amount had been advanced by cash and there were cash deposits even before the date of the alleged sale agreement executed by Mrs.Gnanagandhi.

12. Needless to mention that receipt of money from customers for travellers cheques also could not remain unaccounted for. Moreover cogent evidence was necessary to prove the receipt of cash from customers. That seems to be lacking.

13. An appeal lies under Section 260-A of the Income Tax 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.

14. 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.

15. 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.

16. The relevant paragraphs of the judgment of the Supreme Court in Hero Vinoth (supra) are set out herein below :

> "21...... 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.

17. In Guran Ditta v. Ram Ditta [(1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase "substantial question of law" as used in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration. The Privy Council held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case.

18. In Sir Chunilal Mehta (supra) the Constitution Bench approved the view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju reported in AIR 1951 Mad 969 and held:

> "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."

19. In Chunilal Mehta (supra), the Supreme Court laid down the following as proper test, for determining whether a question of law raised in the case was substantial:

> "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."

20. 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. Reference may be made to Santosh Hazari v. Purushottam Tiwari reported in (2001) 3 SCC 179.

21. In M.Janardhana Rao Vs. Joint Commissioner of Income Tax reported in 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 Income Tax Act too.

22. The question is whether the explanation given by the appellant assessee for cash deposits in his personal bank account was substantiated by materials and/or evidence on record. The Appellate Commissioner, in substance, held that there were no materials to explain the deposits. It cannot possibly be held that is any substantial question of law is involved in this appeal.

23. The appeal cannot be entertained and the same is dismissed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

Jvm

To
1.The Income Tax Officer,
Ward V (1),
Coimbatore.

2.The Income Tax Appellate Tribunal,
B(SMC)Bench, Chennai.

3.The Commissioner of Income Tax(Appeals)-3,
Coimbatore.

+ 1 cc to Mr.M.P.Senthil Kumar Standing Counsel for Income Tax Dept. SR.17266

+ 1 cc to M/s.G.Baskar, Advocate,SR.17210

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