IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.68 of 2015

The Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

Shri Vishnu Bhagwan Garg,
45/17, G.A.Road,
Old Washermenpet,
Chennai – 600 021. ...Respondent

Prayer:

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 03.06.2014 in ITA.No.2107/Mds/2013.

For Appellant	:	Mr.J.Narayanasamy
For Respondent	:	Mr.G.Baskar

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This case was argued at length and all the documents that were furnished before the Assessing Officer as also before the Appellate Commissioner were produced before us.

2. We have considered the arguments advanced by the learned counsel on either side and also, we have considered the documents & impugned order.

3. This Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act') and is directed against the Final order dated 03.06.2014 of the Income Tax Appellate Tribunal (for brevity, "ITAT") in ITA.No.2107/Mds/2013.

4. By the impugned order, the Appellate Tribunal has not only dismissed the appellant/Income Tax Department's Appeal in

ITA.No.2107/Mds/2013 but also cross objection filed by the respondent/assessee in C.O.No.02/Mds.2014.

5. This Appeal was admitted on 23.03.2015 on the following substantial question of law:

> "*(1) Whether on the facts and in the circumstances of the case the Tribunal was right in confirming the order of CIT (A) deleting the addition on account of unaccounted purchases and unaccounted sales as made by the assessing officer?*"

6. The brief facts that are relevant for the case are as under:-

(a) The respondent/assessee had filed the Return of Income on **31.08.2009**, admitting a Gross Total Income of **Rs.13,08,881/-** and had arrived at net taxable income of **Rs.11,67,720/-**. The respondent/assessee paid a sum of **Rs.2,31,834/-** towards tax with interest at **Rs.11,052/-**. In all, the petitioner paid a sum of **Rs.2,42,883/-** after adjusting the advance tax, the TDS and Self Assessment Tax that was earlier paid.

(b) The returns filed by the respondent/assessee ultimately culminated in an Assessment order dated **30.12.2011**, wherein, a sum of **Rs.13,44,67,794/-** was added to the income of the respondent/assessee as unexplained cash credit under Section 68 of the IT Act.

(c) Thus, the assessed income of the respondent/assessee was increased to **Rs.13,56,35,520/-** (Rs.11,67,720+13,44,67,794) from Rs.11,67,720/-.

(d) After adjusting the tax already paid and the self assessment tax paid by the respondent/assessee, the balance tax payable by the petitioner was determined as **Rs.6,08,12,750/-**.

(e) Aggrieved by the same, the respondent/assessee filed an appeal before the Appellate Commissioner who vide order dated **07.08.2013** in **ITA.No.150/2013-14** allowed the Appeal filed by the respondent/assessee under Section 250(6) of the IT Act, 1961.

(f) Before the aforesaid order was passed in ITA.No.150/2013-2014 on 07.08.2013 by the Appellate Commissioner, the respondent/assessee had approached the Additional Commissioner of Income Tax who by order dated 26.12.2011 had directed the Assessing Officer to consider the reconciliation submitted by the respondent/assessee with the existing material and to pass a speaking order thereafter.

(g) However, the aforesaid Assessment Order dated **30.12.2011** was passed by the Assessing Officer, within four days of the order dated **26.12.2011** of Additional Commissioner of Income Tax for the Assessment Year 2009-10 passed under Section 144A, without considering the aforesaid directions of the Additional Commissioner of Income Tax.

(h) In the background of these two orders is a survey under Section 133A of the IT Act conducted on 27.01.2011.

(i) During the course of the survey proceedings, the officers of the Income Tax Department noticed certain discrepancies between the records maintained in respect of unaccounted purchase and unaccounted sale.

(j) During the course of the proceedings, the respondent/assessee admitted to purchase sale suppression and therefore agreed to pay an adhoc amount of Rs.4 Crores towards tax by tendering a Statement on **20.01.2011**.

(k) However, after giving the aforesaid statement on 20.01.2011, Shri Vishnu Bhagwan Garg, Partner of the respondent/assessee retracted the statement by communication dated **02.02.2011**.

(l) The respondent/asseseee was thereafter issued with **Show Cause Notice dated 18.11.2011** and a Show Cause Notice dated **24.11.2011** followed by a written submission dated **26.12.2011** and order dated 26.12.2011 of the Additional Commissioner of Income Tax under Section 144A of the IT Act.

(m) The **Assessment Order** that was passed on **30.12.2011** for Assessment Year 2009-10 concludes that the respondent/assessee had not only suppressed the sale but had also suppressed the purchase which resulted in an unexplained cash credit of **Rs.13,44,67,794/-** which was to be added to the taxable income of the respondent/assessee.

(n) In the said order, the Assessing Officer has clearly mentioned that despite calling upon the respondent/assessee to appear on **30.12.2011**, the respondent/assessee failed to appear. Therefore, in view of the absence of any supporting documents and in view of the assessment getting time barred, the Assessing officer was constrained to pass an **Assessment Order** dated **30.12.2011** for the Assessment Year **2009-10**, taking into consideration of the difference in the stock between sale and purchase.

(o) Before the CIT (Appeals) in ITA.No.150/12-13, a remand report was called from the Assessing Officer.

7. Under these circumstances, the Assessing Officer has given a remand report dated **21.05.2012** and **08.01.2012** and ultimately concluded that the accounts were properly maintained by the respondent/assessee and therefore there was no question of adding any amount to the taxable income of the respondent/assessee. That apart, the report of the auditor in Form 3CD was also taken note of by the Commissioner (Appeals) while allowing the appeal in **ITA.No.150/13-14** of the respondent/assessee vide order dated **07.08.2013**. The said order passed by the Commissioner (Appeals) in **ITA.No.150/13-14** has been now upheld by the Appellate Tribunal.

8. In our view, no substantial question of law that arises for consideration in this Appeal filed by the Income Tax Department under Section 260A of the IT Act. In this connection, it is relevant to refer the law settled by the Hon'ble Supreme Court in ***Sir Chunilal V.Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. [AIR 1962 SC 1314].***

9. The law in context of scope of the expression "Substantial Question of Law" has been decided by the Hon'ble Apex Court in ***Sir Chunilal V.Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. [AIR 1962 SC 1314].*** Explaining the import of the expression, "Substantial Question of Law", the Constitution Bench of the Hon'ble Supreme Court observed as under:

> *"6. ... 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."*

10. Similarly, in ***Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179]*** , a Full Bench of this Court observed as follows:

"14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. 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."

22. In Hero Vinoth v. Seshammal [(2006) 5 SCC 545] , this Court has observed that: (SCC p. 556, para 24)

"(iii) The general rule is that the 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. The remand report dated **21.05.2012** and **08.12.2013** of the Assessing Officer were considered by the Commissioner (Appeals) in order dated 07.08.2015. It is only thereafter the appeal of the respondent/assessee was allowed by the Commissioner (Appeals) which decision has been affirmed by the Appellate Tribunal vide its impugned Final Order dated **03.06.2014** by dismissing the **ITA.No.2107/Mds/2013** filed by the Assistant Commissioner of Income Tax.

12. In fact, we had also called upon the respondent/assessee to file copies of Income Tax Returns filed on 31.08.2009 and Profit & Loss Account filed for the relevant Assessment Year and the same produced and was perused by us. There is no variance between the amount that was declared as the taxable income of the petitioner and the records that were substantiated before the Commissioner (Appeals). As such, we do not find any merits in

this Appeal. Therefore, this Appeal filed by the Income Tax Department is liable to be dismissed.

13. Therefore, this Tax Case Appeal is dismissed and the appeal is answered against the Revenue, in favour of the respondent/assessee. No costs.

[R.S.K., J.] **[C.S.N., J.]**
21.11.2024

jas/mrr

Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

To
1.Income Tax Appellate Tribunal "A" Bench,
Chennai.

2.The Commissioner of Income Tax,
Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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