HIGH COURT OF DELHI AT NEW DELHI.

ITA 57/2000

Date of decision : July 11, 2000.

MAHAVIR WOOLLEN MILLS.....ASSESSEE
Through .. Mr O.S.Bajpai
Advocate.

- VERSUS -

COMMISSIONER OF INCOME-Tax.....Respondent

Coram :-

THE HON'BLE MR JUSTICE ARIJIT PASAYAT, C. J.
THE HON'BLE MR JUSTICE D.K. JAIN

i) Whether Reporters of local papers may be allowed to see the judgment. Yes

ii) To be referred to the reporter or not ? Yes

Arijit Pasayat, C. J.

This is an appeal under Section 260A of the Income-tax Act, 1961 (in short, the Act) challenging an order of the Income-tax Appellate Tribunal Delhi Bench-C (in short, the Tribunal). According to the assessee, the following question needs to be adjudicated :

> "Whether the seized papers, in question constituted to be "books of account" or "document" for the purpose of Section 158(b) of the Income-tax Act, 1961 which defined, "undisclosed income."

2. Factual position as noticed by the Tribunal is as follows:

On 16.11.1995, search operations were carried out under section 132(1) of the Act at the business premises of the concerns of a group known as Mahavir Woollen Group which included four assessees including the appellant and at the residential premises of the partners also. During the course of search, certain incriminating documents were found and seized. In response to notices under Section 158 BC of the Act, all the four assessees filed returns declaring that there was no undisclosed income. Assessments were concluded on positive income after considering the seized documents by the Deputy Commissioner of Income-tax, Special Range-36, New Delhi(in short, the D.C.)

Four appeals were filed by the four assessees. Appeal IT (SS)A No. 32/Del/96 relates to the present appellant. During the course of search and seizure proceedings certain slips were found, which, the Assessing Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly reflected in the books of accounts. The assessee's stand before the Tribunal was that the documents were "dumb documents" which did not contain full details about the dates of payment and its contents were not corroborated by any material and could not be relied upon and made basis of an addition. Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, seized documents could not be regarded as 'dumb document'. Basis for coming to such a conclusion was that some of the entries reflected in the seized document tallied with the entries in the Ledger Accounts maintained by the assessee. It also noticed that there was no denial of the fact about the seizure of the documents. Merely because a denial was made by the assessee that no cash payments were made or

regular account books should be taken to reflect the true state of affairs, the seized documents could not be ignored A positive finding was recorded that there was no denial of the position that the documents were seized during the course of search and its ownership was not disputed. It did not also accept the stand that the writer of the document was under some misconception about the mode of payment. It was the sole and exclusive knowledge of the assessee as to who was the person who had written the document and therefore the onus was on the assessee to bring some material on record to rebut and contradict the correctness of the entries about cash payments. Consequently, it was observed that assessee has miserably failed to discharge the onus. Therefore the Assessing Officer's conclusion that cash payment represented unexplained investment of the assessee which was liable to be assessed under Section 69 of the Act in the assessment year 1996-97. Accordingly the assessee's appeal on that score was not entertainable.

3. Learned counsel for the assessee-appellant submitted that the seized paper cannot be construed to be books of account or document for the purpose of section 158B(b) of the Act, which defined undisclosed income.

According to him, document lacks particulars, details and therefore, was a dumb document as was contended before the Tribunal.

4. As indicated above, the Tribunal has come to certain factual conclusion about the nature of paper seized. On the question whether the document did or did not contain the particulars Tribunal observed that it did contain certain materials which were sufficient to come to a conclusion about cash

payments having been made in addition to those made by cheques and drafts. The conclusion is essentially factual.

5. Section 260A(1) of the Act reads as follows :

> "An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law"

The issue raised by the assessee in the appeal cannot be said to involve any question of law, much less a substantial question of law. A question of fact becomes a question of law, if the finding is either without any evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based. But, it is not possible to turn a mere question of fact into question of law by seeking whether as a matter of law the authority came to a correct conclusion upon a matter of fact.

In *Edward v. Bairstow* (1955) 28 ITR 579, (H.L.), Lord Simonds observed that even a pure finding of fact may be set aside by the Court if it appears that the Commissioner has acted without a any evidence or on a view of the facts which could not be reasonably entertained. Lord Radcliffe stated that no misconception may appear on the face of the case, but it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances the Court may intervene.

6. The words " substantial question of law" has not been defined. But the expression has acquired a definite connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial question of law is involved. They are as follows :

1. Whether, directly or indirectly, it affects substantial rights of the parties, or
2. the question is of general public importance, or
3. whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or Privy Council or by the Federal Court, or
4. the issue is not free from difficulty, and
5. it calls for a discussion for alternative view.

Considering in the above background, it cannot be said that any question of law much less substantial question of law is involved which needs adjudication. Appeal is, therefore, not entertained and is dismissed.

CHIEF JUSTICE.

July 11, 2000. D.K.JAIN, J

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