HIGH COURT OF DELHI AT NEW DELHI

I.T.A. 58 of 2000

Date of decision: 3rd July 2000

SHRI CHAMAN LAL .....APPELLANT
8-34, KIRTI NAGAR,
NEW DELHI

through Mr. Dalip Singh
Advocate

- versus -

COMMISSIONER OF INCOME-TAX .....RESPONDENTS
DELHI 4(1), NEW DELHI AND
ANOTHER

through nemo

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. (ORAL)

1. This is an appeal under Section 260-A of the Income Tax Act 1961 (in short the "Act"). For the assessment year 1980-81 certain additions were made by the Assessing Officer for unexplained cash found during search in petitioner's premises and unexplained expenditure. Matter was taken in appeal before the Commissioner of Income-tax (Appeals) [in short "CIT(A)]. Relief was granted on several heads by said authority. Matter was carried by the Revenue before the Income-tax Appellate Tribunal Delhi (in short the "Tribunal"). Cross-objections

2. Tribunal upheld the finding recorded by the CIT(A), so far as the relief granted for a sum of Rs.56,000/- in respect of cash found at the time of search. So far as his claim regarding loans from seven parties is concerned, the Tribunal found that positive materials were not produced before the CIT(A) and therefore it was not possible on its part to record any definite finding. Therefore the matter was remitted to CIT(A) to examine assessee's claim for the availability of funds to the extent of Rs.82,500/- claimed to be on account of loans. CIT(A) was directed to take a fresh decision and pass a speaking order. So far as assessee's cross-objection is concerned, Tribunal found that its first plea relating to non-service of notice under Section 148 was untenable in view of materials on record. As regards additions for investment in house property and investment in fixed deposits are concerned, assessee's stand was that for an earlier year it was accepted. Tribunal held that the plea to be not tenable as there was no nexus between additions made in the earlier years and the investment made in the subsequent years.

3. Learned counsel appearing for the appellant submitted that instead of setting aside the order of the CIT(A), the Tribunal itself should have examined the matter and should have held that the

assessee. Similarly it was submitted that the Tribunal was not justified in taking a different view from that taken for the assessment years 1972-73 to 1979-80 by order dated 22.08.1995. It was also submitted that conclusions regarding service of notice under Section 148 are not factually correct.

4. Section 260-A (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 issues raised by the assessee in the appeal cannot be said to be involving any question of law much less a substantial question of law.

5. 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 a question of law by asking whether as a matter of law the authority came to a correct conclusion upon a matter of fact.

6. In Edward v. Bairstow (1955) 28 I.T.R. 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 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.

7. 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:

> (i) whether directly or indirectly it affects substantial rights of the parties or
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> (ii) the question is of general public importance, or
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> (iii) 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,
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> (iv) the issue is not free from difficulty and
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> (v) it calls for a discussion for alternative view.

8. So far as the issues in the case at hand are concerned, essentially they are questions of

fact and the Tribunal has with reference to material facts recorded positive findings of fact, giving rise to no question of law. The appeal is dismissed.

(CHIEF JUSTICE)

(D. K. JAIN)
JUDGE

JULY 3, 2000
SG