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ITA No.188/2003

HIGH COURT OF DELHI : NEW DELHI

+ ITA No.188/2003% *Date of Decision : 30 September 2003.*

# **COMMISSIONER OF INCOME-TAX .... Appellant**  
 ! **Through: Mr. Sanjeev Khanna,**  
**Advocate.**

Vs.

\$ **M/S. BHARAT ENTERPRISES ....Respondent**  
 ^ **Through: None.**

**CORAM:**

\* **THE HON'BLE MR.JUSTICE D.K. JAIN**  
 \* **THE HON'BLE MR.JUSTICE MADAN B. LOKUR**

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

\* **D.K. JAIN, J. (ORAL)**

This appeal by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short 'the Act'), is directed against the order dated 1 October 2002, passed by the Income-Tax Appellate Tribunal Delhi Bench 'C' Delhi (for short 'the Tribunal') in ITA No.388 (Del) of 1996, pertaining to the assessment year 1990-91.



Factual position, as highlighted by the appellant, is as follows:

The assessee, a registered firm, derives income from purchase and sale of Copper wire and Motor Stampings. It has two partners. One of the partners', namely, R.K. Gupta is based in Coimbatore and looks after the sales of the assessee firm. The goods are purchased in Delhi, transported to Coimbatore and sold there.

On 13 February 1990, search and seizure operations under Section 132 of the Act took place at the business and residential premises of the assessee and its partners both at Delhi and Coimbatore. According to the Revenue, post-search enquiries revealed that some of the goods transported to Coimbatore had been sold but the sales proceeds were not accounted for in the books of account. It was felt that unaccounted money received on such sales was remitted to Delhi in the form of bank drafts obtained by said R.K. Gupta. The drafts were drawn in favour of certain parties in Delhi. During the course of assessment proceedings, it was also noticed by the



Assessing Officer that some part of the goods dispatched to Coimbatore through Patel Roadways, was not accounted for in the books of account.

Accordingly, the assessee was asked to reconcile these discrepancies. The stand of the assessee before the Assessing Officer was that there was no discrepancy in the accounts. Insofar as the reconciliation vis-a-vis the accounts of Patel Roadways was concerned, it was stated that the books of account of Patel Roadways were defective and, therefore, only they were required to explain the discrepancies, if any. It was explained that mere entries in the books of account of Patel Roadways were not sufficient to come to the conclusion that the amounts in question represented income of the assessee from undisclosed sources. A commission was issued by the Assessing Officer to the ADI, Coimbatore to provide an opportunity to R.K. Gupta to cross-examine the witnesses, who had alleged that cash was paid to them to get the drafts prepared, which was done.

Not being satisfied with the explanation furnished,



the Assessing Officer came to the conclusion that the assessee had concealed its sales and had received back the amounts from various parties after discounting the drafts. He worked out such concealed sales at Rs.,15,82,487/-, representing the difference between the goods dispatched as per the books of Patel Roadways and as declared by the assessee, <sup>and</sup> added the same to the returned income as unexplained investment under Section 69 of the Act. Consequently, another addition of Rs.2,12,053/-, being the profit earned on the undisclosed investment was also made to the returned income.

Being aggrieved, the assessee preferred appeal to the Commissioner of Income-tax (Appeals), challenging both the additions. Inter alia, observing that on scrutiny of the statements of various persons, recorded by the ADI, Coimbatore, he did not find any adverse comments against the appellant and further the representative of Patel Roadways had clearly stated that they do not maintain party-wise accounts of their clients and anybody can book the goods in the name of any party, The Commissioner



came to the conclusion that no addition could be sustained in the hands of the assessee merely on the basis of certain entries appearing in the books of Patel Roadways. As regards the alleged purchase of drafts by R.K. Gupta in various names, the Commissioner held that since no evidence was on record to suggest that the alleged unaccounted money brought from Coimbatore, had been invested anywhere, there was no need to have the drafts issued by involving various persons. He also found contradictions in the statements of various parties, on which reliance had been placed by the Assessing Officer. The Commissioner was of the view that none of the statements incriminated the assessee. Consequently, the Commissioner deleted both the additions.

Aggrieved, the Revenue took the matter in further appeal to the Tribunal but without any success. Hence, the present appeal. According to the appellant, the order of the Tribunal involves the following substantial questions of law:

“(i) Whether the order of the Income Tax Appellate Tribunal passed in ITA No.388(Del) of 1996 is perverse on account of non application of mind by the learned Tribunal?”



"(2) Whether Income Tax Appellate Tribunal was justified in the eyes of law to completely rely on the order of the Commission of Income-tax (Appeals) without applying its mind that the said order of the Commissioner of Income tax (Appeals) cannot be said to be valid order which deleted the addition of respondent of Rs.15,82,487/- made on account of unexplained investment representing unrecorded sales at Coimbatore?"

"(3) Whether Income Tax Appellate Tribunal was justified in the eyes of law to completely rely on the order of the Commissioner of Income-tax (Appeals) without applying its mind that the said order of the Commissioner of Income-tax (Appeals) cannot be said to be valid order which deleted the addition of Rs.2,12,053/- made on account of undisclosed profit arising from the above said unrecorded sales?"

(4) Whether Income-tax Appellate Tribunal was justified in the eyes of law to ignore the law laid down by the Apex Court of the country in the case of Omar Salay Mohammad Sait Vs. CIT reported in (1959) 37 ITR 151 (SC) which reads as follows:

"We are aware that ITAT is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for



consideration, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice..... On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material or relevant evidence and partly on suspicions, surmises or conjectures”

“(5) Whether the Income Tax Appellate Tribunal was justified in the eyes of law to ignore its statutory duty to reexamine all the facts of a case before it before passing any order instead to completely rely on the order of the Commissioner of Income tax (Appeals) and quote the finding in its order without applying its judicial mind. Such order cannot be said to be valid, legal and proper in the eyes of law ?”

“(6) Whether the Income-tax Appellate Tribunal was justified in the eyes of law in ignoring substantial evidence collected against the assessee by the Assessing Officer through enquiries made in Delhi and Coimbatore and after recording statements from various parties and whether justified in granting relief to the assessee on the basis of irrelevant material/evidence?”

“(7) Whether the Income-tax Appellate Tribunal was justified in the eyes of law in ignoring the submissions of the D.R. that in this case the CIT (Appeals) should have given



an opportunity to the Assessing Officer before proceeding to delete the two additions. It was the submission that no basis for deletion had been given, more so, when the documents found during the course of the search and those which came on record subsequently ?”

We have heard Mr.Sanjiv Khanna, learned senior standing counsel for the Revenue.

Assailing the impugned order, Mr.Khanna has strenuously urged that the order is vitiated because the Tribunal has failed to apply its independent mind to the facts of the case and has merely relied on the findings recorded by the Commissioner. It is, thus, submitted that since the impugned order has been passed without any application of mind by the Tribunal, it is perverse, giving rise to a substantial question of law.

We are unable to persuade ourselves to agree with the learned counsel. It needs little emphasis that the jurisdiction of the High Court under Section 260-A of the Act is limited and is confined to entertaining only such appeals against orders, which involve substantial question of law. Though the expression “substantial question of law” is not



defined in the Act or any other statute, where a similar expression appears but by virtue of various pronouncements, it has acquired a definite connotation and meaning. Recently in Santosh Hazari Vs. Purushottam Tiwari, (2001) 251 ITR 84, while dealing with an analogous provision contained in Section 100 of the Code of Civil Procedure, 1908, the Apex Court reiterated the tests laid down by the Constitution Bench in Chunilal V.Mehta & Sons Ltd. (Str) Vs. Century Spinning & Manufacturing Co. Ltd., AIR 1982 SC 1314, for determining whether a question of law raised in a case is a "substantial question of law" or not. In that case it was said that the proper test would be, whether: (i) it is of general public importance; or (ii) it directly or substantially affects the rights of the parties; or (iii) it is an open question in the sense that it is not finally settled by the Supreme Court; or (iv) is not free from difficulty and (v) it calls for discussion of alternative views. It is well settled that where determination of an issue depends upon the appreciation of evidence or materials resulting in ascertainment of basic facts, without application



of any principle of law, the issue raises a pure question of fact (See: Sree Meenakshi Mills Limited Vs. Commissioner of Income-tax, Madras (1957) 31 ITR 28)

Having considered the mater in the light of the afore-mentioned tests, we are of the view that no question of law, much less a substantial question of law is involved in the present case.

As noted supra, the Commissioner, on a detailed analysis of the entire evidence, relied upon by the Assessing Officer, had come to the conclusion that the additions could not be sustained for want of sufficient evidence against the assessee. It may be true that while affirming the view taken by the Commissioner, the Tribunal has not specifically referred to the evidence on record but a reading of its order, in entirety, particularly the penultimate paragraph thereof, does show that the Tribunal was aware of the issues involved. In the said paragraph the Tribunal has expressed its agreement with the finding recorded by the Commissioner that the statements of some of the persons had, at best, given rise to a doubt about the correctness of



the accounts of the assessee but in view of apparent contradictions in these statements, vis-a-vis their cross-examination, these were not sufficient to call for rejection of accounts of the assessee. The Tribunal has also found substance in the observations of the Commissioner that there was no logic in conducting sales outside the books of account in such a round about manner, as alleged by the Assessing Officer, when it would have been much easier for the assessee to go ahead with the sales and pocket the money at Coimbatore. The conclusion of the Tribunal is purely based on appreciation of evidence and is essentially one of fact. No application of any principle of law is involved in the case. This being the position, the impugned order does not give rise to any substantial question of law.

Consequently, we decline to entertain the appeal.

Dismissed.

  
D.K.JAIN, J.

  
MADAN B. LOKUR, J.

September 30, 2003

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