HIGH COURT OF DELHI AT NEW DELHI

ITA No.248/2003

DATE OF DECISION : 18 JULY 2003

COMMISSIONER OF INCOME TAX .....APPELLANT
Through: Mr. Sanjeev Khanna, Adv.

Versus

M/S.S.J. KNITTING & FINISHING MILLS P. LTD. .. RESPONDENT
Through: Nemo

CORAM:

HON'BLE MR.JUSTICE D.K. JAIN
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 260A of the Income tax Act, 1961 (for short the Act) is directed against an order, dated 24 December 2002, passed by the Income-tax Appellate Tribunal, Delhi Bench, New Delhi (for short the Tribunal) in ITA No.1775/Del/1997, pertaining to the assessment year 1986-87. According to the Revenue, the

order of the Tribunal involves the following substantial questions of law:

> "1. Whether the order of the ITAT dismissing the appeal of the Revenue is perverse and contrary to the relevant material on record and passed without considering the reasoning and basis given by the Assessing Officer disallowing expenditure of Rs.53,400/- allegedly paid as salary to the wives of the two directors ?
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> 2. Whether the ITAT was right in dismissing the appeal of the Revenue against deletion of Rs.53,400/- allegedly paid as salary to the wives of two directors though the principle of res judicata is not applicable to income tax proceedings.
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> 3. Whether the order of the ITAT deleting addition on account of bogus purchases of Rs.3,15,653/- is perverse and contrary to facts and material on record and ignores evidence and reasoning of the Assessing officer.
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> 4. Whether the ITAT was right in holding that the assessee has been able to discharge the onus and prove the genuineness of the purchases of Rs.3,15,653/- from various parties ?

Briefly stated, the relevant facts giving rise to the present appeal are as follows:

The assessee, a private limited company, derives income from printing and dyeing of fabrics and sarees. For the aforementioned assessment year, it did not file its return of income and, therefore, proceedings under Section 148 of the Act were initiated against it by issue of a notice on 22 February 1988. Pursuant thereto the assessee filed its return of income declaring nil income after adjustment of the brought

forward losses, though for the relevant assessment year assesee's income was Rs.20,11,763.

During the course of assessment proceedings, the Assessing Officer noticed that the assessee had made payments of Rs.26,700/- each as salary to Ms.Indu Sahni and Ms.Neera Sahni, wives of the two directors of the company. The assessee was required to furnish evidence with regard to the services rendered by the two ladies. It was claimed by the assessee that the said two ladies were sales and liasoning officers of the company. Not being satisfied with the explanation furnished, the Assessing Officer disallowed the said expenditure holding that it could not be regarded as business expenditure, wholly and exclusively expended for the purpose of assessee's business. Accordingly, he made an addition of Rs.53,400/- on this account. The Assessing Officer also disallowed the sum of Rs.3,27,767/- as unproved purchases on account of coal, furnace oil and oil lubricants.

Aggrieved, the assessee preferred appeal to the Commissioner of Income-tax (Appeals), who deleted both the additions. As regards the disallowance of the salaries paid to the two ladies, the Commissioner observed that the rate of salary to each of them worked out to Rs.2225/- per month, which was less than what was normally paid to an Assistant. Taking note of the fact that similar payments had been allowed in the

earlier years, the Commissioner observed that merely because the persons concerned were ladies, and wives of two directors, it could not be doubted that they did not work at all for and on behalf of the company. Regarding the other disallowance, the Commissioner found that the purchase transactions had taken place in the year 1984-85 whereas inquiries were conducted by the Assessing Officer in the year 1989-90 and, therefore, it was not possible for the assessee to get hold of all the suppliers and produce them before the Assessing Officer. Inter-alia, observing that purchase vouchers, copy of accounts of the parties concerned were furnished and most of the payments had been made by means of cheques, the Commissioner held that the assessee had furnished all the necessary information within the short time afforded to it to prove the genuineness of its purchases.

Being aggrieved, the Revenue took the matter in appeal before the Tribunal. While dismissing the appeal the Tribunal again noticed that the salaries to these two ladies were paid from year to year basis in the past but no such disallowance was ever made; no new feature had been brought on record by the Assessing Officer in the present assessment year, justifying deviation from the earlier conclusions. As regards the second issue, the Tribunal noted that the assessee had maintained complete quantitative recordswith regard to purchase of the items which

were doubted by the Assessing Officer. Even the supporting documents such as entry passes, octroi receipts were verified by the Inspector deputed by the Assessing Officer as well as the Commissioner and both of them had not found any fault in this behalf. The Tribunal also noticed the handicap of the assessee in producing the parties after a gap of almost five years from the date of the transaction. Hence the present appeal.

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

It is strenuously urged by Mr.Khanna that since the assessee had failed to furnish satisfactory evidence for the services rendered by the ladies as also in respect of its claim for purchases, both the appellate authorities below were not legally correct in deleting the additions on the ground that similar payments were accepted in earlier years. The submission is that principle of res judicata has no place in the income tax proceedings and Assessing Officer having brought out sufficient material in support of the disallowances, the Commissioner and the Tribunal should not have deleted the additions.

We are unable to agree with the learned counsel. There is no gain saying that the jurisdiction of the High Court under Section 260A of the Act is confined to entertaining only such appeals against orders which involve substantial question of law. The expression "substantial question

of law" is not defined in the Act or any other statute, where a similar expression appears. However, the connotation and meaning of the expression has been explained in various pronouncements. Recently, in Santosh Hazari Vs. Purushottam Tiwari, **(2001) 251 ITR 84**, dealing with an analogous provision contained in Section 100 of the Civil Procedure Code, 1908, and while observing that the phrase "substantial question of law" is to be understood as something in contradiction with technical, of no substance or consequence or academic merely, their Lordships of the Supreme Court, after considering a number of decisions on the point reiterated the test laid by the Constitution Bench in Sir Chunilal V. Mehta & Sons Ltd Vs. Century Spinning & Manufacturing Co. Ltd. **AIR 1962 SC 1314** for determining whether a question of law raised in case is substantial question or not. 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 for alternative views.

These five tests were culled out in Bhagat Construction Co.(P) Ltd. Vs. Commisisoner of Income-tax, **(2001) 250 ITR 291**, to which decision one of us (D.K.Jain, J.) was a party. In the same decision the

following tests were laid down to determine whether the question involved is one of fact or law:

> (1)"As the Tribunal is a final fact-finding authority, if it has reached certain findings upon examination of all relevant evidence and materials before it, the existence or otherwise of certain facts at issue is a question of fact.
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> (2)Any inference from certain facts is also a question of fact. If a finding of fact is arrived at by the Tribunal after improperly rejecting evidence, a question of law arises.
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> (3)Where a court of fact acts on materials partly relevant and partly irrelevant and it is impossible to say to what extent the mind of the adjudicating forum was affected by the irrelevant material used by it in arriving at the finding gives rise to a question of law. Such a finding is vitiated because of the use of inadmissible material.
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> (4)When any finding is based on no evidence or material, it involves a question of law. In other words, if the Tribunal acts on irrelevant materials and evidence, a question of law is involved."

Applying the above tests to the facts in hand, we are of the view that no question of law, much less a substantial question of law is involved in the present case.

As noticed supra, bot the authorities have recorded concurrent findings of facts that the said expenditures were incurred by the assessee for the purposes of its business and similar expenses had been allowed in the past. The said findings are essentially findings of fact. ~~As noticed~~ above, A question of fact may become a question of law in three situations enumerated above. Though it is pleaded that the order of the Tribunal is

perverse in as much as its findings are not based on cogent material, but is is not shown as to how the evidence brought on record by the assessee was not relevant. The inferences drawn by the Tribunal are from factual aspects noted by the Commissioner and in our view, cannot be said to be based on irrelevant material.

In our view this appeal is wholly misconceived. Accordingly, we decline to entertain the appeal. Dismissed.

D.K. JAIN, J.

MADAN B. LOKUR, J.

JULY 18, 2003
"v"