IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 26th OF FEBRUARY, 2024

INCOME TAX APPEAL No. 82 of 2023

BETWEEN:-

PR. COMMISSIONER OF INCOME TAX I AAYAKAR BHAWAN, WHITE CHURCH ROAD INDORE (MADHYA PRADESH)

.....PETITIONER

(MS. VEENA MANDLIK, COUNSEL FOR THE PETITIONER).

AND

SURYA INFRAVENTURE P. LTD. 407-A CITY CENTRE INDORE PAN AADCA4235D (MADHYA PRADESH)

.....RESPONDENTS

This appeal coming on for admission this day, ***Justice Sushrut Arvind Dharmadhikari*** *passed the following:*

ORDER

Heard on I.A.No. 1951/2024, an application for condonation of delay.

2. For the reasons stated in the application, the same is allowed. Delay of 50 days in filing the appeal is hereby condoned.

3. Also heard on the question of admission.

4. This is an appeal filed by the appellant under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961') being aggrieved by the consolidated order dated 24.11.2022 passed by the Income Tax Appellate Tribunal (ITAT), Bench Indore in ITA No. 232/Ind/2022 and

C.O.No. 15/Ind/2022 for the Assessment Year 2012-13. The following substantial question of law has been proposed in this appeal :

> (i) Whether on the fact and in the circumstances of the case, the ITAT was justified in deleting the addition of Rs. 3,37,50,000/- on account of receipts not shown in the Return of income towards completion of specified works as per the milestone schedule of payment and cannot be treated as advance money?
>
> (ii) Whether on the fact and in the circumstances of the case, the ITAT was justified in law in deleting the addition of Rs. 7,42,880/- on account of difference between gross receipts and actual receipts of the assessee?
>
> (iii) Whether on the fact and in the circumstances of the case, the ITAT was justified in law in quashing the action U/s 147 of the Assessing Officer in reopening of the case by holding that the objection raised by the assessee were not disposed of by the AO before completion of assessment?

5. In short, the question that arises for consideration in this appeal is, whether this appeal involves any substantial question of law, as is required to be made out under Section 260A of the Act of 1961, that being the prerequisite of admission of the appeal.

6. The brief facts of the case are that the assessee/respondent is a private limited company carrying on the business of government work contract for construction of road. The assessee/respondent filed e-return of income on 29.09.2012 for the assessment year 2012-13 declaring a loss of Rs.1,79,88,391/-. The assessment was completed under Section 143(3) of the Act on 25.03.2015 at the loss of Rs. 1,79,88,391/- as declared by the assessee. Subsequently, the case of the assessee was reopened and notice under Section 148 of the Act was issued on 18.12.2017. On receipt of notice, the assess filed its Return of Income on 20.01.2018 declaring loss of Rs.1,79,56,045/-. Considering the facts and material, reassessment was completed on 28.09.2018 by making addition of Rs. 3,75,50,000/- on account of amount received by the assessee from M/s SCC Projects Pvt. Ltd. ('SCCPPL' for short) by treating it as income. Being aggrieved with the order of the Assessing Officer, the

assessee preferred an appeal before the CIT(A) which was allowed vide order dated 16.08.2021. Against the said order, Revenue preferred an appeal before the ITA which was dismissed vide order dated 24.11.2022 and the cross objection of the assessee was allowed.

7. Learned counsel for the appellant submitted that the ITAT erred in holding that the assessee had correctly offered the net amount of Rs. 7,05,28,925/-. It was held that the assessee had already offered the amount of advance of Rs. 3,75,50,000/- received during the year as income in the A.Y. 2013-14 hence, the same was deleted and also dismissed the addition of Rs. 7,42,880/- holding that the labourers were hired by M/s SCCPPL, therefore, the liability to deduct labour cess is on M/s SCCPPL.

8. Learned counsel for the appellant further submitted that the learned ITAT has erred in allowing the cross-objection of the assessee and holding that the reopening of the case of the assessee tantamounts to change of opinion which is not permissible as per Section 147 of the Act. Further, it was held that the order of the Assessing Officer cannot be sustained since he proceeded with the reassessment proceedings without following the mandatory procedure of disposing of the objections raised by the assessee by passing a speaking order. Therefore, it is a fit case to be entertained.

9. Heard learned counsel for the appellant and perused the substantial questions of law.

10. Before dealing with the aforesaid controversy, it would be expedient to refer to Section 260-A of the Act of 1961. The provisions, relevant for our purpose, read thus:

> 260-A. Appeal to High Court - (1) 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.

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commission or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;

(b) xxx

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question,

(5) The High Court shall decide the question of law so formulated and deliver such a judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which-

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reasons of a decision on such question of law as is referred to in sub-Section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

11. From a bare reading of the Section, it is apparent that an appeal to the High Court from a decision of the Tribunal lies only when a substantial question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises from the said order, it is mandatory that such question(s) must be formulated. The expression "substantial question of law" is not defined in the Act. Nevertheless, it has acquired a definite

connotation through various judicial pronouncements.

12. While explaining the import of the said expression, the Apex Court in case of **Sir Chunilal V. Mehta & Sons, Ltd. Vs. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314**, observed that:

> "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."

13. Similarly, in **Santosh Hazari Vs. Purushottam Tiwari, (2001) 3 SCC 179** it was observed that:

> "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, AIR 1962 SC 1314 (2001) 3 SCC 179 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."

14. In **Hero Vinoth (Minor) Vs. Seshamma, (2006) 5 SCC 545**, the Apex Court has observed that:

> "The general rule is that 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."

15. A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread. **(See: Madan Lal Vs. Mst. Gopi & Anr. (1980) 4 SCC 255; Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi, (2009) 3 SCC 287; Commissioner of Customs (Preventive) Vs. Vijay Dasharath Patel (2007) 4 SCC 118; Metroark Ltd. Vs. Commissioner of Central Excise, Calcutta (2004) 12 SCC 505; West Bengal Electricity Regulatory Commission Vs. CESC Ltd. (2002) 8 SCC 715)**.

16. The Apex Court in case of **K.Ravindranathan Nair vs. CIT, (2001) 1 SCC 135** has observed as under :

> "The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.

17. When tested on the anvil of the afore-noted legal principles, we are of the opinion that in the instant case no substantial question of law arises from the order of the Tribunal as the appellant has raised all the question of facts and have disputed the fact findings of the ITAT in the garb of substantial questions of law which is not permitted by the statute itself. This Court refrains from

entertaining this appeal as there is no perversity in the order passed by the ITAT since the ITAT has dealt with all the grounds raised by the appellant in the order impugned and has passed a well reasoned and speaking order taking into consideration all the material available on record. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference with the concurrent findings of the CIT (A) as well as the ITAT therewith by this Court is not warranted.

18. For the aforesaid reasons, we have no hesitation in holding that no question of law, much less any substantial question of law arises from the order of the Tribunal requiring consideration of this court. There is no merit in the appeal as making addition/deletion cannot be said to be erroneous and prejudicial to the interest of revenue. Thus, in our opinion, the present case does not involve any substantial question of law so as to meet the provisions of Section 260(A) of the Act for admitting the appeal.

19. In view of the aforesaid discussion, we do not find any merit in this appeal, which in our opinion deserves to be and is hereby dismissed in *limine*.

(S. A. DHARMADHIKARI)
JUDGE

(HIRDESH)
JUDGE

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