REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 3265-3266 OF 2003

VIJAY KUMAR TALWAR — APPELLANT

VERSUS

COMMISSIONER OF INCOME TAX, DELHI — RESPONDENT

J U D G M E N T

D.K. JAIN, J.:

1. Challenge in these two appeals, by special leave, is to the orders dated 21st December, 2001 and 19th February, 2002 whereby the High Court of Delhi dismissed : (i) the appeal filed by the appellant herein under Section 260-A of the Income Tax Act, 1961 (for short "the Act") in I.T.A. No.202 of 2001, holding that the order of the Income Tax Appellate Tribunal, New Delhi (for short "the Tribunal") did not give rise to any substantial question of law; and (ii) the review petition preferred by the appellant against order dated 21st December, 2001, holding that the petition was not maintainable.

2. Shorn of unnecessary details, the facts material for adjudication of the present appeals may be stated. These are :

The appellant (hereinafter referred to as "the assessee") was a partner in a firm, named and styled as M/s Des Raj Tilak Raj, having its business at Delhi, with a branch at Calcutta. The said partnership firm was dissolved w.e.f. 1st April 1982. As per the dissolution deed, the assessee took over the business of the Calcutta branch of the erstwhile firm. Thereafter, from 21st October, 1982, the assessee started a proprietary concern by the name of M/s Des Raj Vijay Kumar.

3. On 27th May, 1983, a search took place at the assessee's premises during which certain incriminating documents were recovered and seized. During the course of assessment proceedings for the assessment year 1983-1984, for which the previous year ended on 31st March 1983, the assessing officer examined the seized record. One of the registers so examined, revealed cash receipts of `3,49,991/- in the name of 15 persons, most of which were purportedly received during the period of April, 1982 to October, 1982. When the assessing officer sought an explanation from the assessee with regard to the said cash credits in the register, the assessee merely stated that the cash receipts were in the nature of realisations from the past debtors of the erstwhile

firm. In order to appreciate the said stand, the assessing officer called for the account books of the Calcutta branch of the erstwhile firm for the relevant period, but the assessee failed to produce them. The assessing officer also examined the assessee's brother, a partner in the erstwhile firm, who also stated that the account books were not available.

4. Having noted that the outstanding realisations of the Calcutta branch in the preceding years varied from `25,000/- to `30,000/-, the assessing officer held that the assessee's submission that cash receipts of `3,49,991/- related to earlier years was untenable. Therefore, vide order dated 20th February, 1986, the assessing officer added a sum of `3,49,991/- as assessee's income under the head "unexplained cash receipts."

5. Aggrieved, the assessee appealed to the Commissioner of Income Tax, (Appeals)-XV, New Delhi, who vide his order dated 6th December 1989, dismissed the same and confirmed the addition made by the assessing officer.

6. Being still aggrieved, the assessee carried the matter in appeal before the Tribunal. Vide order dated 27th September, 1994, the Tribunal,

while partly allowing the appeal, remitted the matter back to the assessing officer for de-novo adjudication. The Tribunal observed that:

> "We find that some of the entries pertained to the period when the erstwhile firm was in existence whereas the assessee did not conduct business at Calcutta in a proprietary capacity but was only a partner in the erstwhile firm. The A.O. himself observed in the assessment order that the cash receipts are from April 1982 to October, 1982 i.e. prior to the start of the assessee's proprietary business in the name of M/s Desraj Vijay Kumar. As against this, we find that some of the entries are dated prior to April, 1982 when the erstwhile firm was in existence. Then again, it is not known as to what happened to the income between the period 1.4.1982 to October, 1982 as the erstwhile firm is supposed to have been dissolved w.e.f 1.4.1982 and as per the assessee's version the proprietary business was started from October 1982. There is no information made available to us as to whether the Department initiated any action u/s 148 to subject the cash receipts aggregating Rs. 3,49,991/- in the hands of the erstwhile firm……
> ……..……
> ……..….
> 11. In view of the aforesaid discussion, we although taking the view that the onus on the facts and circumstances of the case squarely lies on the assessee, hold that the material has to be re-considered in light of the afore-said observations….."

7. Pursuant thereto, on 17th May, 1995, the assessing officer asked the assessee to file confirmations of the 15 parties, in whose names cash credit entries appeared in the register seized during the search. In his reply dated 22nd May, 1995, the assessee stated that the said cash receipts were realisations of the sales effected in the earlier years by

the erstwhile firm. Subsequently, the assessee was given three more opportunities on 2nd June 1995, 16th June, 1995, and 3rd July, 1995 to produce fresh evidence, which were not availed of by him. Vide letter dated 28th July, 1995, the assessee was given a final opportunity to file confirmations of the 15 parties, with their complete addresses. In his reply, the assessee filed the confirmations of 7 parties, with the address of 6 other parties. The assessing officer considered the two remaining parties as non-existent. It is pertinent to note that all the seven confirmations filed by the assessee were identical, and did not contain either a date or the GIR No. of the confirming party; and merely stated that the concerned party had dealings with the erstwhile firm, and it had made purchases from them in the year ending 31st March, 1982 and had made payments prior to October, 1982; and since the matter was really old, the books of accounts of the firm were not available.

8. When the assessing officer sent letters to the six parties, whose addresses had been supplied, three did not respond, while two others denied any relationship with the firm, and remaining one letter was returned by the post office with remarks "not known." Similarly, when letters were sent to parties who had filed confirmations, three of

those letters were returned by the post office marked "not known.", and another one as "no claims." One of the parties denied any relationship with the firm. In light of these circumstances, the assessing officer, vide order dated 19th March, 1996, confirmed the original assessment.

9. The assessee preferred an appeal before the Commissioner of Income Tax, (Appeals)-III, which was dismissed vide order dated 16th December, 1998. The Commissioner observed that:

> "The contention of the appellant is apparently unacceptable. Any business realisations of the partnership would have been shared by the erstwhile partners. The cash receipts of `3,49,991/- as per the seized material is, therefore, held to belong to the appellant and assessable as unexplained receipts in the hands of the appellant. The assessment of appellant's income including the aforesaid receipt is, therefore, confirmed and the appeal is dismissed."

10. Still not being satisfied, the assessee carried the matter in appeal before the Tribunal. The Tribunal, vide order dated 23rd October, 2000, while partly allowing the appeal, held that the addition of `3,49,991/- was correct. It observed that:

> "We are also of the opinion that the confirmations filed by the appellant are of no use because they have not been co-related with the transactions alleged to have been found entered in the register seized during the time of search if it represents the realization of outstanding amount on sales, this could have been

proved with the cross reference to the entries in the register. We cannot ignore the fact that the enquiry letters sent by the A.O. remained unserved, unanswered and denial."

11. On 22nd February, 2001, the assessee moved an application under Section 254(2) of the Act before the Tribunal for rectification of mistakes in the order of the Tribunal dated 23rd October, 2000. It was pleaded that the Tribunal had erred in observing that the assessee's premises were raided due to heavy sales, and that cash amounting to `3,49,991/- was seized; that the assessing officer had issued ITNS 150, which the assessee had filed before the Commissioner (Appeals); and that the Tribunal did not take into consideration the arguments and various judgments relied on by the assessee. Vide order dated 25th September, 2001, the Tribunal rejected the rectification petition on the ground that:- (i) the Tribunal had relied on the assessing officer's order in relation to the factual position, and there was no reason to interfere with the same; (ii) while it was true that cash amounting to `3,49,991/- was not recovered, but the said amount was entered in the register which was recovered; and therefore, this would not affect the findings of the Tribunal; (iii) the remarks in relation to ITNS 150 were not made by the Tribunal, but by the department's representative and (iv) re-considering the judgments relied on, and the arguments made,

would tantamount to a review, which power the Tribunal is not authorised to exercise under Section 254(2) of the Act.

12. The assessee preferred an appeal before the High Court under Section 260-A of the Act. As already stated, the High Court, vide judgment dated 21st December 2001, dismissed the appeal of the assessee, observing that:

> "To us it appears that the findings recorded by the Commissioner of Income Tax as also the Income Tax Appellate Tribunal are pure findings of fact. Appreciation of evidence does not fall within the realm of this Court's jurisdiction under section 260-A of the Income Tax Act……
> ……
> ……..
> Having regard to the fact and circumstances of this case we are, therefore, of the opinion that no question of law far less any substantial question of law arises for consideration in this appeal."

13. Thereafter, the assessee filed a review petition before the High Court, which was also dismissed vide order dated 19th February, 2002.

14. Hence, the present appeals.

15. Mr. K.R. Manjani, learned counsel appearing on behalf of the assessee, assailed the impugned orders on the ground that since the Tribunal had taken into consideration irrelevant materials, its findings

were perverse and, therefore, the High Court has erred in holding that there was no substantial question of law involved.

16. *Per contra,* Mr. R.P. Bhatt, learned senior counsel appearing on behalf of the Revenue supported the view taken by the High Court and asserted that the impugned orders deserve to be affirmed.

17. Before adverting to the rival submissions, it would be expedient to refer to Section 260-A of the Act. The provisions, relevant for our purpose, read thus:

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

18. It is manifest from a bare reading of the Section 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. In ***Sir Chunilal V. Mehta & Sons, Ltd.*** *Vs.* ***Century Spinning and Manufacturing Co. Ltd.***[1]**,** a Constitution Bench of this Court, while explaining the import of the said expression, observed that:

> "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."

19. Similarly, in ***Santosh Hazari*** *Vs.* ***Purushottam Tiwari***[2], a three judge Bench of this Court 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,

[1] AIR 1962 SC 1314
[2] (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."

20. In ***Hero Vinoth (Minor)*** *Vs.* ***Seshammal***[3], this 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."

21. 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

[3] (2006) 5 SCC 545

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.***[4]***; Narendra Gopal Vidyarthi*** *Vs.* ***Rajat Vidyarthi***[5]***; Commissioner of Customs (Preventive)*** *Vs.* ***Vijay Dasharath Patel***[6]***; Metroark Ltd.*** *Vs.* ***Commissioner of Central Excise, Calcutta***[7]***; West Bengal Electricity Regulatory Commission*** *Vs.* ***CESC Ltd.***[8])

22. Examined on the touch-stone of the afore-noted legal principles, we are of the opinion that in the instant case the High Court has correctly concluded that no substantial question of law arises from the order of the Tribunal. All the authorities below, in particular the Tribunal, have observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68 of the Act, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of account. In the absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question viz., realisation

[4] (1980) 4 SCC 255
[5] (2009) 3 SCC 287
[6] (2007) 4 SCC 118
[7] (2004) 12 SCC 505
[8] (2002) 8 SCC 715

from the debtors of the erstwhile firm, in the opinion of the assessing officer, was not satisfactory. It is well settled that in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory. (See: ***Sumati Dayal*** *Vs.* ***Commissioner of Income Tax, Bangalore***[9] and ***Commissioner of Income Tax*** *Vs.* ***P. Mohanakala***[10]). We are of the opinion that on a conspectus of the factual scenario, noted above, the conclusion of the Tribunal to the effect that the assessee has failed to prove the source of the cash credits cannot be said to be perverse, giving rise to a substantial question of law. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference therewith by this Court is not warranted.

23. For the foregoing 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 the High Court.

[9] 1995 Supp (2) SCC 453
[10] (2007) 6 SCC 21

There is no merit in the appeals. Both the appeals are dismissed accordingly with costs, quantified at `20,000/-.

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(D.K. JAIN, J.)

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(T.S. THAKUR, J.)

NEW DELHI;
DECEMBER 6, 2010.

RS