A M. JANARDHANA RAO

v.

JOINT COMMISSIONER OF INCOME TAX

JANUARY 28, 2005

B [RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Income Tax Act, 1961; Section 260-A :

Appeal under Section 260-A—Procedural requirements—Held : High
C *Court not empowered to decide an appeal without following due procedure prescribed therefor—Since High Court disposed of the appeal without formulating and determining question of law at admission stage, matter remitted to the High Court for deciding it afresh strictly following the procedural requirements of Section 260-A.*

D *Question of law* **vis-a-vis** *substantial question of law—Distinction between.*

Right of appeal—Regulations of.

E **The question which arose for determination in these appeals were as to whether High Court is empowered to dispose of an appeal filed under Section 260-A of the Income Tax Act without formulating a question of law at the stage of admission and disposing it of without determining as to whether the question formulated was substantial question of law. However, the basic dispute/issue came before the High Court for**
F **determination was relating to Income tax liability on the amount received by the assessees/partners out of the sale proceeds of assets of a dissolved firm.**

It was contended by the appellant-assessees that the arguments raised by them relating to non-applicability of the principle of slump sale were
G **not considered by the High Court; that before amendment of Section 50B of the Income Tax Act by Finance Act, 1999 there was no scope for levying any tax under the heading 'capital gain'; and that no question was formulated by the High Court at the admission stage, however, the questions were formulated by the High Court for the purpose of**

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adjudicating the appeals. A

Disposing of the appeals, the Court

HELD : 1.1. An appeal under Section 260A of the Income Tax Act to the High Court lies only when a substantial question of law is involved. It is essential for the High Court to first formulate question of law and thereafter proceed in the matter. [880-A] B

1.2. The High Court is not empowered to generally decide an appeal under Section 260A of the Act without adhering to the procedure prescribed thereunder. Further, the High Court must make every effort to distinguish between a question of law and a substantial question of law. In exercise of powers under this Section, the findings of fact of the Tribunal cannot be disturbed. [880-B] C

Sir Chunilal V. Mehta & Sons Ltd. **v.** *Century Spinning & Mfg. Co. Ltd.,* **AIR (1962) SC 1314, referred to.** D

1.3. Right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in Section 260A of the Act must be strictly fulfilled before an appeal can be maintained under the Section. Such appeal cannot be decided on merely equitable grounds. [880-C-D] E

2. In the instant case, no substantial question of law was formulated at the time of admission of the appeal. Obviously, the High Court has formulated questions subsequently after conclusion of arguments for the purpose of adjudication. That is clearly against the scheme of Section 260A of the Act. Additionally, certain points which were urged have not been dealt with by the High Court. Hence, the matter is remitted to the High Court for re-determination of the matter afresh keeping in view the prescriptions of Section 260-A of the Act. However, it is clarified that no opinion is expressed on the merits of the case. [880-G-H; 881-A] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4232 of 2003.

From the Judgment and Order dated 19.12.2002 of the Karnataka High Court in I.T.A. No. 137 of 2000.

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C.A. Nos. 4242, 4237, 4233-34, 4235-36, 4240-41, 4238-39/2003, 761-64, 755-56/2005, 5322/2003, 757-760, 765-66 of 2005.

R.F. Nariman, S. Ganesh, Harish N. Salve, Joseph Vellapally, M.L. B Verma, Dhruv Mehta, A.A. Kulkarni, Mohit Chaudhary, Harsh Vardhan Jha, Gopal Jain, Ashok Kulkarni, Mahesh Agarwal, Ms. Dhanalakshmi, E.C. Agrawala, Manu Nair, Dhruv Dewan, Preetish Kapur, Satya Mitra and B.V. Balaram Das for the appearing parties.

C The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted in SLP (C) Nos. 13009-13012/2003, 13021-13022/2003, 2763-2766/2004 and 13015-13016/2003.

These appeals have their matrix in a common judgment rendered by a Division Bench of the Karnataka High Court. By the impugned judgment D several appeals filed by assessees and revenue purported to be under Section 260A of the Income Tax Act, 1961 (in short 'the Act') were disposed of.

Detailed reference to the factual aspects would be unnecessary as we propose to dispose of the appeals taking note of submissions made by learned E counsel for the appellants to the effect that the manner of disposal as done by the High Court is not in line with the prescriptions of Section 260A of the Act. Suffice it would to only note that the assessees were at some point of time, partners of a partnership firm styled Mangalore Ganesh Beedi works. The said firm which consisted of thirteen partners stood dissolved in terms of the Deed of Partnership with effect from 6.12.1987, by efflux of time. F According to the revenue, thereafter the erstwhile partners continued the business being members of an Association of Persons.This Association of Persons was described by the authorities and the High Court as A.O.P.-13. This entity continued till the assets of the firm were sold pursuant to orders of the High Court in winding up proceedings with effect from 21.11.1994 in terms of a scheme framed. Pursuant to the scheme, several members of the G A.O.P.-13 had offered bids either individually or in groups. The bid of three of them, described as A.O.P.-3 was accepted by order dated 21.9.1994. After deposit of the bid amount of Rs. 92 crores, it was noted that the assets of the erstwhile firm were treated to have been sold to A.O.P.-3 with effect from 21.11.1994.

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All these appeals relate to the assessment year 1995-96, for the accounting year ending on 31.3.1995. The appellants had filed their returns of income in the status of individual. The Assessing Officer was of the view that share of income from the association of persons (A.O.P.-13) was to be included, along with share of income from capital gains. The basic dispute relates to the question whether the amount received had an element of capital gain. The assets of the firms were sold pursuant to an order passed by the High Court by invoking provisions of Section 583(4)(a) of the Companies Act, 1956 (in short 'the Companies Act'). The Revenue Authorities were of the view that the amount received by way of consideration after statutory adjustments amounted to receipt from a slump sale and was , therefore, taxable under the heading 'capital gain'. The conclusions of the Revenue Authorities were challenged by the assessees before the Income Tax Appellate Tribunal, Bangalore Bench (in short 'ITAT'). Aggrieved by various conclusions, the assessees as well as the Revenue preferred appeals before the Karnataka High Court which were disposed of by the impugned common judgment.

Learned counsel for the assessees-appellants submitted that the arguments raised by them relating to non-applicability of the principle of slump sale were not considered by the High Court. There was even no reference to the plea that before amendment of Section 50B of the Act by Finance Act, 1999 there was no scope for levying any tax under the heading 'capital gain' before 1.4.2000. The questions were formulated by the High Court for adjudicating the appeals after the arguments were concluded for the purpose of rendering the judgment. No question was formulated when the appeals were admitted. With reference to Section 260A of the Act it is submitted that the prescriptions of the said Section were not kept in view by the High Court.

In response, Mr. M.L.Verma, learned senior counsel for the Revenue supported the judgment of the High Court stating that the issues raised by the parties were elaborately dealt with by the High Court and the appellants cannot have any grievance.

Section 260A of the Act reads as follows :

> *"Section 260A, 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.

A (2) The chief commissioner or the commissioner 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 B which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

(b) omitted

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

(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 D 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 E 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 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- F

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

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

G (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"

H This section was inserted by Finance (No.2) Act, 1998 (21 of 1998)

w.e.f. 1.10.1998. A

The section was operative when the High Court took up the matter for admission. Certain changes were introduced in the Section by Finance Act, 1999 w.e.f 1.6.1999. They do not have much relevance so far as present dispute is concerned, except that sub-section (7) has been introduced which provides that the provisions of the code of 'Civil Procedure, 1908 (in short B 'the CPC') relating to appeals to the High Court shall, as far as may be , apply in the case of appeals provided under the Section, save as otherwise provided in the Act.

Some of the provisions of Section 260A are in *pari materia* with various sub-sections of Section 100 CPC. The provisions are Section 260A(1), C 260(2)(c), 260A(3), 260A(4) of the Act corresponding to Section 100(1), 100(3), 100(4) and 100(5) of CPC.

Various essentials as culled out from the relevant provisions of the Act are as follows: D

Under Section 260A(2)(c) the appeal under Section 260A shall be (a) in the form of a memorandum of appeal and (b) precisely stating therein the substantial question of law involved. Under Section 260A(3) when the High Court is satisfied that a substantial question of law is involved in any case it shall formulate that question and under section 260A(4) the appeal is to be E heard only on the question formulated under the preceding sub-section. It has to be noted that in terms of Section 260A(4) the respondent in the appeal is allowed to argue at the time of hearing of the appeal that the case does not involve a substantial question of law as formulated. However, proviso to Section 260A(4) specifically lays down that nothing in Section 260A(4) shall be deemed to take away the power of the High Court to hear, for reasons to F be recorded, the appeal on any other substantial question of law not formulated by it, in case it is satisfied that the case involves such question. Section 260A(5) provides that the High Court to decide the question of law as formulated and to deliver the judgment thereon containing grounds on which such decision is founded. G

Sub-section (6) empowers the High Court to determine any such issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal by reasons of a decision of such question of law as is referred to in sub-section (1)

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A It is important to note that appeal to the High Court lies only when a substantial question of law is involved. It is essential for the High Court to first formulate question of law and thereafter proceed in the matter.

Without insisting on the statement of substantial question of law in the memorandum of appeal and formulating the same at the time of admission, B the High Court is not empowered to generally decide the appeal under Section 260A without adhering to the procedure prescribed under Section 260A. Further, the High Court must make every effort to distinguish between a question of law and a substantial question of law. In exercise of powers under Section 260A, the findings of fact of the Tribunal cannot be disturbed. C It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in Section 260A must be strictly fulfilled before an appeal can be maintained under Section 260A. Such appeal cannot be decided on merely equitable grounds.

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An appeal under Section 260A can be only in respect of a 'substantial question of law'. The expression 'substantial question of law' has not been defined anywhere in the statute. But it has acquired a definite connotation through various judicial pronouncements. In *Sir Chunilal* V. *Mehta & Sons Ltd.* v. *Century Spinning & Mfg. Co. Ltd.*, AIR (1962) SC 1314, this court E laid down the following tests to determine whether a substantial question of law is involved. The tests are: (1) whether directly or indirectly it affects substantial rights of the parties, or (2) the question is of general public importance, or (3) whether it is an open question in the sense that issue is not settled by pronouncement of this Court or Privy Council or by the Federal F Court, or (4) the issue is not free from difficulty, and (5) it calls for a discussion for alternative view. There is no scope for interference by the High Court with a finding recorded when such finding could be treated to be a finding of fact.

On reading of impugned judgment of the High Court it is clear that no G substantial question of the law was formulated at the time of admission of the appeal. Obviously, the High Court has formulated questions subsequently after conclusion of arguments for the purpose of adjudication. That is clearly against the scheme of Section 260A. Additionally , grievance that certain points which were urged have not been dealt with by the High Court appears to be correct.

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In the aforesaid background, the impugned judgement of the High Court is set aside. The matter is remitted to the High Court which shall deal with the matter afresh keeping in view the prescriptions of Section 260A of the Act. We make it clear that we have not expressed any opinion on the merits of the case. A

For a period of three months the interim protection given by this Court in the matter of recovery of tax shall be operative. It shall be open to the parties to move the High Court for such interim protection as the facts of the case warrant till disposal of the appeals. B

The appeals are disposed of accordingly with no order as to costs. C

S.K.S. Appeals disposed of.