REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3968 OF 2019
(Arising out of S.L.P.(C) No.29524 of 2017)

PR. Commissioner of Income Tax
Central 2 ....Appellant(s)

VERSUS

M/s A.A. Estate Pvt. Ltd. ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 09.01.2017 passed by the High Court of judicature at Bombay in ITA No.1239 of 2014 whereby the High Court dismissed the appeal of the Revenue-Commissioner of Income Tax-Mumbai(appellant herein).

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellant is the Revenue-Commissioner of Income Tax, Mumbai, whereas the respondent is an assessee.

5. The respondent-assessee is a Company engaged in the business of development and building of properties. The dispute relates to the assessment year 2008-09.

6. On 24.12.2009, the Assessing Officer (for short, “the AO”) completed the assessment under Section 143(3) read with Section 153A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) and determined the total income at Rs.7,77,49,790/-.

7. On 22.09.2010, the AO issued a notice under Section 148 of the Act seeking therein to re-open the assessment of the respondent-assessee which was made on 24.12.2009. This notice was issued by

the AO on the basis of information received from ADIT (investigation) Unit II (2).

8. By this notice, the AO proposed to make an addition of Rs.1,70,94,000/- towards unaccounted sale proceeds alleged to have been made by the respondent-assessee in the assessment year in question (2008-2009) because, in his opinion, it was in the nature of escaped assessment.

9. The AO proposed this addition on the basis of one document (Annexure–AB-1), which was seized by the Revenue Department in their search operation carried on 30.11.2007 in the business premises of another assessee by name-M/s Ashok Buildcom Ltd.

10. In other words, the foundation for issuance of notice under Section 148 of the Act to the respondent-assessee for adding the aforementioned sum was the document-Annexure-AB-1.

11. The respondent-assessee objected to issuance of notice contending *inter alia* that first, there is no factual foundation for issue of notice; Second, there is no case for any "escaped assessment", and Third, there is no case to "reason to believe".

12. By order dated 30.12.2011, the AO overruled the objections raised by the respondent-assessee and passed a re-assessment order by adding a sum of Rs.1,70,94,000/- in the total income of the respondent-assessee. He held that, in his opinion, it was a case of escaped assessment and secondly, there was enough material to add the said sum in the total income of the respondent-assessee for the assessment year under consideration.

13. The respondent-assessee felt aggrieved and filed appeal before the CIT (appeal). By order dated 21.02.2013, the CIT (appeal) dismissed the appeal and upheld the addition made by the AO. The respondent-assessee felt aggrieved and filed second

appeal before the ITAT. By order dated 05.02.2014, the Tribunal allowed the appeal and set aside the order of the CIT (appeals).

14. The Commissioner of Income Tax felt aggrieved and filed appeal before the High Court under Section 260-A of the Act. By impugned order, the High Court dismissed the appeal and affirmed the order of the Tribunal giving rise to filing of the special leave to appeal by the Commissioner of Income Tax in this Court.

15. So, the short question, which arises for consideration in this appeal, is whether High Court was justified in dismissing the appeal filed by the Commissioner of Income Tax (appellant herein).

16. Heard Mr. H.R. Rao, learned counsel for the appellant and Mr. Salil Kapoor, learned counsel for the respondent.

17. Having heard the learned counsel for the parties and on perusal of the record of the case and

the written submissions filed by the learned counsel, we are inclined to allow this appeal and while setting aside the impugned order, remand the case to the High Court for deciding the appeal afresh.

18. In our view, the need to remand the case to the High Court has occasioned for more than one reason as stated hereinbelow.

19. First, the High Court did not formulate any substantial question of law as was required to be framed under Section 260-A of the Act.

20. Second, in Para 2 of the impugned order, the High Court observed that "*Revenue urges following questions of law for our consideration*".

21. As is clear from reading of Para 2, the two questions set out in Para 2 were not the questions framed by the High Court as was required to be framed under Section 260-A(3) of the Act for hearing

the appeal but were the questions urged by the appellant.

22. In our view, there lies a distinction between the questions proposed by the appellant for admission of the appeal and the questions framed by the Court.

23. The questions, which are proposed by the appellant, fall under Section 260-A (2) (c) of the Act whereas the questions framed by the High Court fall under Section 260-A (3) of the Act. The appeal is heard on merits only on the questions framed by the High Court under sub-section (3) of Section 260-A of the Act as provided under Section 260-A (4) of the Act. In other words, the appeal is heard only on the questions framed by the Court.

24. Third, if the High Court was of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by

the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigor of Section 260-A of the Act for its admission and accordingly should have dismissed the appeal *in limine*.

25. It was, however, not done and instead the High Court without admitting the appeal and framing any question of law issued notice of appeal to the respondent-assessee, heard both the parties on the questions urged by the appellant and dismissed it. In our view, the respondent had a right to argue "at the time of hearing" of the appeal that the questions framed were not involved in the appeal and this the respondent could urge by taking recourse to sub-section (5) of Section 260-A of the Act. But this stage in this case did not arise because as mentioned above, the High Court neither admitted the appeal nor framed any question as required under sub-section (3) of Section 260-A of the Act.

The expression "such question" referred to in sub-section (5) of Section 260-A of the Act means the questions which are framed by the High Court under sub-section (3) of Section 260-A at the time of admission of the appeal and not the one proposed in Section 260-A (2) (c) of the Act by the appellant.

26. We are, therefore, of the view that the High Court did not decide the appeal in conformity with the mandatory procedure prescribed in Section 260-A of the Act.

27. Fourth, the High Court should have seen that following substantial questions of law do arise in the appeal for being answered on their respective merits:

> **(i) Whether the reasons contained in Notice under Section 148 are relevant and sufficient for issuance of the said Notice dated 22.09.2010 ?**
>
> **(ii) Whether any case of escaped assessment within the meaning of Section 147 read with Section 148 of the Act for the assessment year in question is made out by the**

Commissioner of Income Tax on the basis of the reasons set out in the notice ?

(iii) Whether a case of presumption as contemplated under Section 132(4A) of the Act could be drawn against the respondent-assessee on the basis of a document (Annexure AB-1) which was seized in search operation carried in the business premises of another assessee - M/s Ashok buildcom by adding a sum of Rs.1,70,94,000/- for determining the total tax liability of the respondent for the year in question as an escaped assessment so as to enable the Department to issue notice dated 22.09.2010 under Section 148 of the Act to the respondent?

28. In the light of the foregoing discussion, we consider it just and proper to remand the case to the High Court for deciding the appeal afresh to answer the questions framed above on merits in accordance with law.

29. The appeal thus succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the appeal filed by the Commissioner of Income Tax-Mumbai afresh on merits as provided under Section

260-A(4) of the Act to answer the three questions framed by this Court under Section 260-A(3) of the Act.

30. The High Court will decide the appeal uninfluenced by any observations made in the impugned order and in this order because having formed an opinion to remand the case, we have not expressed any opinion on the merits of the case.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
April 16, 2019