IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 169 of 2023

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 1 , AHMEDABAD
Versus
AXIS BANK LTD.
==
Appearance:
MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1
MR RK PATEL, SR COUNSEL assisted by MR DARSHAN R PATEL(8486) for the Opponent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 11/07/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE DEVAN M. DESAI)

1. The appellant has filed present Tax Appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as `the Act'). The same is arising out of an order dated 29.6.2022 passed by the Income Tax Appellate Tribunal (hereinafter referred to as `the Tribunal') in ITA No.1682/Ahd/2019 for A.Y. 2015-16.

2. Heard learned counsel Mr. Varun K. Patel for the appellant and learned Senior Counsel Mr. R.K. Patel assisted by learned advocate Mr. Darshan Patel for

the respondent. Perused the record.

3. The learned advocate for the appellant has proposed the following substantial questions of law for consideration:

> "(a) Whether in the facts and in the circumstances of the case, the learned ITAT has erred in law and on facts in deleting the penalty of Rs.2,30,45,220/- levied u/s.271(1)(c) of the Act, without appreciating that the assessee had furnished inaccurate particulars of income in the return of income filed by it ?

4. The learned advocate for the appellant has submitted that the respondent assessee filed its return of income on 24.11.2015 by declaring total income of Rs.11721,80,75,240/-. Thereafter, the

respondent filed revised return of income dated 30.3.2017 declaring revised income of Rs.11253,09,30,950/-. The return was processed u/S.143(A) of the Act and the case of the respondent assessee was selected for scrutiny. Pursuant to the scrutiny, notice u/S.142(2) of the Act was issued to the respondent assessee. Assessee filed its reply against the said notice. The assessment order came to be passed by AO on 12.12.2017 and thereby assessed total income at Rs.11733,85,52,868/-.

5. Being aggrieved and dissatisfied by the said assessment order, the respondent assessee preferred an appeal before the CIT (Appeals). The CIT (A) vide its order dated 29.3.2019 dismissed the appeal of the respondent assessee and penalty order u/S.271(1)(c) of the Act, dated 11.9.2019 came to be passed. It was observed by the CIT (A) in its order that the assessee filed

inaccurate particulars of income and hence liable for penalty u/S. 271(1)(c) of the Act and the respondent assessee was charged with penalty and the AO was directed to calculate the penalty u/S.271(1)(c) of the Act.

6. Being aggrieved and dissatisfied with the said order, the respondent assessee preferred an appeal before the ITAT. The learned ITAT vide its order dated 29.6.2022 allowed the appeal of the respondent assessee.

7. The learned advocate for the appellant has taken us through the impugned order of the learned tribunal. It is submitted by the learned advocate for the appellant that the learned ITAT has erred in law and on facts in deleting the penalty of Rs.2,30,45,220/- levied u/S.271(1)(c) of the Act. The further submission of the learned advocate for the appellant is that the learned ITAT has

without appreciating that the assessee had furnished inaccurate particulars of the income in the return of income has allowed the appeal of the assessee.

8. Per contra, learned Senior Counsel Mr. R. K. Patel for the respondent has prayed for the dismissal of the tax appeal for the reason that the proposed substantial question of law is not a substantial question of law and the issue involved by way of proposed question of law is no more *res integra*.

9. It is submitted by the learned advocate for the respondent that the respondent assessee had claimed excess depreciation on the land component of the properties purchased in the year 2011-12, the revenue failed to detect the same. Even in the year under consideration, AO did not ascertain the same but the assessee *suo motu* before the learned CIT (A) submitted

regarding this. It is further submitted by the learned advocate for the respondent that the assessee itself, to align its books of accounts with the MCA notification disclosed all the particulars relating to the excess claim.

10. Learned counsel for the respondent has relied upon the decision of Hon’ble Supreme Court rendered in the case of ***Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts (P) Ltd. reported in 2010(189) Taxman 322 (SC)*** wherein the issue of Section 271(1)(c) was considered. He has also relied upon the decision in the case of ***Mak Data (P) Ltd. v. Commissioner of Income Tax – II reported in 2013(38) taxmann.com, 448. (SC)***.

11. Learned counsel for the respondent has relied upon the paragraph Nos.7 to 9 of ***Reliance Petroproducts (P) Ltd. (Supra),*** wherein the

Hon’ble Supreme Court has observed as under:

> *“7. As against this, Learned Counsel appearing on behalf of the respondent pointed out that the language of Section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under:-*
>
> *"271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-*
>
> *(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."*

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing

inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs.Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and

reiterated in para 13 that:- "13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."

8. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of Section 271(1) provided for a discretionary

jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. was upset. In Union of India Vs.

Dharamendra Textile Processors (cited supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276-C of the Act. The basic reason why decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled by this Court in Union of India Vs. Dharamendra Textile Processors (cited supra), was that according to this Court the effect and difference between Section 271(1)(c) and Section 276-C of the Act was lost sight of in case of Dilip N. Shroff Vs.

Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra). However, it must be pointed out that in Union of India Vs. Dharamendra Textile Processors (cited supra), no fault was found with the reasoning in the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra), where the Court explained the meaning of the terms "conceal" and inaccurate". It was only the ultimate inference in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr. (cited supra) was overruled.

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:-

> "*not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript*"*.”*

12. Learned counsel for the respondent has relied upon the paragraph No.9 of ***Mak Data (P) Ltd. (Supra),*** wherein the Hon’ble Supreme Court has observed as under:

> *“9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been*

impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961."

13. We have considered the rival submissions of both the sides and also perused the impugned decision of learned ITAT.

14. The Hon’ble Apex Court in the case of ***Reliance Petroproducts (P) Ltd. (Supra)***, has observed that the applicability of Section 271(1)(c), the conditions stipulated thereunder must exist. In the present case, the conditions as stipulated under Section 271(1)(c) are examined. Section 271(1)(c) of the Act is reproduced hereunder:

> "271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."

15. In the present case, the revenue has failed to establish that there was a concealment of particulars of the income of the assessee. The revenue has also failed to establish that the assessee had furnished inaccurate particulars of its income.

16. So far as the proposed substantial question of law is concerned, a reference of a decision dated 15.7.2021 in Tax Appeal No.162 of 2021 rendered by the Coordinate Bench of this Court in the case of ***Principal Commissioner of Income Tax, Vadodara v. M/s. Bell Ceramics Limited*** is necessary. In the said decision, the Coordinate Bench of this Court in Paragraph Nos.11 and 12 has observed as under:

"11. It may be noted that the Appeal under Section 260A could be admitted only on the High Court being satisfied that the case involves a substantial question of law. The Supreme Court in the case of M. Janardhana Rao versus Joint Commissioner of Income Tax reported in (2005) 2 SCC 324, while dealing with the scope of Section 260A of the Income Tax Act, 1961, observed as under : -

"14. Without insisting on the statement of substantial question of law in the memorandum of appeal and formulating the same at the time of admission, 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. 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.

15. 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 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 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.

12. Again the Supreme Court in case of Vijay Kumar Talwar versus Commissioner of Income Tax in (2011) 330 ITR 1 considered the issue of substantial question in context of Section 260A of the IT Act and observed as under:

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

20. In Hero Vinoth (Minor) Vs. Seshammal (2006) 5 SCC 545, 556, 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 wellrecognised 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 (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. (1980) 4 SCC 855; 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).”

17. In the case on hand, on perusal of the decision of

the learned ITAT, the learned ITAT has observed that the addition made in the impugned case on account of excess depreciation claimed having been surrendered by the assessee itself without any prior detection of the Revenue and the excess claim having been demonstrated to have been made for the bonafide reasons and hence, the learned ITAT has held that the case is not for the levy of penalty. It is further observed by the learned ITAT that the assessee itself to align its books of accounts with MCA notification disclosed all particulars relating to the excess claim.

18. In view of the totality of the facts and decisions rendered by the Hon’ble Supreme Court and the decision of the Coordinate Bench of this Court in the case of ***M/s. Bell Ceramics Limited (Supra),*** we are of the considered opinion that in the present case, no question of law, much less, any substantial question of law arises for

consideration of this Court. Hence, this appeal is dismissed with no order as to costs.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI,J)

VATSAL