

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. \_\_\_\_\_/2023  
(@ SLP(C) No. 31854/2017)

BIKRAM SINGH

APPELLANT(S)

VERSUS

PRINCIPAL COMMISSIONER OF INCOME TAX

RESPONDENT(S)

O R D E R

Leave granted.

The appellant is aggrieved by the judgment dated 25.08.2017 passed in ITA No.55/2017 by the High Court of Delhi. By the said order, the appeal of the respondent herein filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act" for the sake of convenience) was disposed of on merits without being argued on the substantial question of law. Being aggrieved, the appellant has filed this appeal.

We have heard Mr. C. S. Aggarwal, learned Senior Counsel for the appellant-assessee and Mr. Balbir Singh, learned ASG for the respondent-Revenue and perused the material on record.

The main grievance of the appellant-assessee is with regard to the manner of disposal of the appeal filed by the respondent-Revenue, by the High Court. In this regard our attention was drawn to the impugned order to contend that the said appeal was heard finally by the High Court without initially formulating a substantial question of law as required under Section 260A of the

Act. He drew our attention to paragraph '2' of the said order to submit that the 'question of law' which had been raised was not at a time prior to the hearing of the matter on merits in the sense that there was no notice to the assessee with regard to the substantial question of law which was actually raised in the High Court and in the absence of raising any substantial question of law, arguments were heard on merits and the respondent's appeal was allowed.

Learned senior counsel appearing for the appellant-assessee drew our attention to Section 260A of the Act and particularly to sub-section 3 and sub-section 4 thereof and contended that unless the High Court is satisfied that a substantial question of law is involved in any case, it shall not entertain such an appeal. The High Court has to formulate such question and only then the appeal can be heard only on the question so formulated and the respondent shall at the hearing of the appeal be allowed to argue that the case does not involve such a question. Further, the proviso states that nothing in the said 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. The submission of learned senior counsel for the appellant was that in the instant case there has been a reversal of procedure adopted inasmuch as the learned counsel for the respective parties were first heard on merits of the appeal in the absence of any formulation of substantial question of law and thereafter on 03.08.2017 the appeal was reserved for judgment.

Thereafter, the question of law (not a substantial question of law according to learned senior counsel for the appellant) was formulated and the appeal was allowed on merits.

It was submitted that the impugned judgment may be set aside and the matter may be remanded to the High Court so as to comply with the requisite procedure under Section 260A of the Act.

Per contra learned ASG appearing for the respondent-Revenue supported the impugned judgment and contended that this is not a case where the appellant was taken by surprise inasmuch as pursuant to the issuance of notice by the High Court, the appellant appeared through his counsel and responded to the said notice and argued the case on merits and the High Court had thereafter, reserved the matter for judgment and ahead of passing of the impugned judgment formulated the question of law. Therefore, this appeal does not call for any interference by this Court.

Having heard learned counsel for the respective parties and on perusal of the impugned judgment as well as Section 260A of Act, we find that in the instant case *ex facie* the High Court has not followed the procedure contemplated under Section 260A of the Act. For ease of reference Section 260A of the Act is extracted as under:

"260A. Appeal to High Court.—

1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal [before the date of establishment of the National Tax 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 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 which the order appealed against is [received by the assessee or the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner];

[\* \* \* \* \*]

(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 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 reason 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.]”

On a reading of the said provision it is noted that an appeal before the High Court is maintainable only on a substantial question of law (not a question of fact or only a question of law). The High Court when entertaining such an appeal must formulate that question and admit the appeal, thereafter, on the question so formulated the respondent must also be heard and consequently the matter must be disposed of depending on whether the substantial question of law requires to be answered for or against either of the parties or no such question of law would arise. The High Court has also the power to formulate a fresh question of law if it so arises on hearing the learned counsel for the respective parties in the event, such a substantial question of law would arise and if the High Court is satisfied the said case involves such a question.

Further, Sub-section 7 of Section 260A states that *“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”*. Since the appeal filed under Section 260A of the Act is akin to a Second Appeal, Section 100 read with Order XLII Rule 1 of Code of Civil Procedure would apply, wherein, in a Regular Second Appeal under the said provision read with Section 100 of the said Code, the formulation of a substantial question of law when the matter is entertained and admitted would be required, otherwise the

High Court has the power to dismiss such a Second Appeal on the ground that no such substantial question of law arises in the appeal. For immediate reference, Section 100 of the Code of Civil Procedure, 1908 is extracted as under:

"100. Second appeal.- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

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

(5) The appeal shall be heard on the question so formulated and the respondent 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."

Having discussed the principles for entertainment of an Appeal by the High Court under Section 260A and when the same are applied to the present case, we find that the High Court did not formulate any substantial question of law at the time of admitting the appeal, rather the appeal was heard on merits and in the absence of

formulating the substantial question of law the appeal was reserved for judgment. During the course of preparation of the judgment, the question of law was framed stated to be a "question of law" and the matter was then admitted and at the same time considered on merits. Issuance of notice prior to admission without framing any substantial question(s) of law is not contemplated under Section 260A. The High Court has either to admit or not admit the appeal. If the High Court admits the appeal then substantial question(s) of law has to be framed and the respondent put on notice on such substantial question(s) of law. On the contrary, if the High Court is of the view that no substantial question of law arises, then the appeal has to be dismissed. We find that the procedure adopted by the High Court in the instant case is not in consonance with what is contemplated under Section 260A of the Act and hence, on that short ground alone the impugned judgment is set aside. The matter is remanded to the High Court for re-consideration of the appeal filed by the respondent-Revenue having regard to the essentials of Section 260A and in accordance with law.

Since the parties are represented by their respective counsel, they shall appear before the High Court on 25.09.2023 without expecting any separate notice from the High Court.

Since we are setting aside the judgment of the High Court only on the procedure followed by the High Court in disposing of the appeal under Section 260A of Act, all contentions on the merits of the matter are left open to be urged before the High Court.

The appeal is allowed and disposed of in the aforesaid terms.

No costs.

Pending application(s), if any, shall stand disposed of.

.....J.  
(B.V. NAGARATHNA)

.....J.  
(UJJAL BHUYAN)

NEW DELHI;  
AUGUST 29, 2023



S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).31854/2017  
(Arising out of impugned final judgment and order dated 25-08-2017  
in ITA No. 55/2017 passed by the High Court of Delhi at New Delhi)

BIKRAM SINGH

Petitioner(s)

VERSUS

PRINCIPAL COMMISSIONER OF INCOME TAX

Respondent(s)

Date : 29-08-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. C S Aggarwal, Sr. Adv.  
Mr. Bhargava V. Desai, AOR  
Mr. Ravi Prakash Gupta, Adv.  
Mr. Uma Shankar, Adv.  
Mrs. Pushpa Sharma, Adv.  
Ms. Devina Bhandari, Adv.

For Respondent(s) Mr. Balbir Singh, A.S.G.  
Mr. Raj Bahadur Yadav, AOR  
Mr. Prashant Singh Ii, Adv.  
Ms. Monica Benjamin, Adv.  
Mrs. Apoorv Kurup, Adv.  
Mr. Ashok Panigrahi, Adv.  
Ms. Vimla Sinha, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the signed  
order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)  
COURT MASTER (SH)(MALEKAR NAGARAJ)  
COURT MASTER (NSH)

(Signed order is placed on the file)