

HC can't admit an appeal without formulating any substantial question of law

Bikram Singh vs CIT [2023] 154 Taxmann.com 80 (SC) dated 29th August 2023

Case Brief

Issue before the Court

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.

Observations

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 relevant portion of Section 260A of the Act is extracted as under:

"260A. Appeal to High Court.....

(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:

- 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.

Findings

- 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.