IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 21st OF AUGUST, 2024

INCOME TAX APPEAL No. 124 of 2024

PR. COMMISSIONER OF INCOME TAX CENTRAL

Versus

MUKUL KAKAR

Appearance :

Shri Siddharth Sharma – Advocate for the appellant.

O R D E R

Per: Justice Sushrut Arvind Dharmadhikari

Heard on the question of admission.

The present Income Tax Appeal has been filed under Section 260 of the Income Tax Act, 1961 against the order dated 30.10.2023 passed by Income Tax Appellate Tribunal, Mumbai in ITA No.2437/MUM/2018.

2. In the present appeal the appellant has proposed following substantial questions of law :

> "1. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in law in setting aside the order of the ld.CIT(A) which upheld the addition of

Rs.3,73,00,000/- made on account of unexplained cash credits u/s 68 of the Income Tax Act, 1961 in respect of unexplained unsecured loans, ignoring that :

(a) the assessee has failed to establish identity, creditworthiness of the lender companies as well as genuineness of the transactions?

(b) the assessee has failed to discharge its onus u/s 68 of the Act, among other aspects especially the burden under the first proviso thereof?

2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in setting aside the order of ld. CIT(A) which upheld the addition of Rs.3,73,00,000/- made on account of unexplained cash credits u/s 68 of the Income Tac Act, 1961 in respect of unexplained unsecured loans on the gound that AO failed to make certain further enquires, ignoring that :

(a) Once the AO, through various opportunities given during assessment proceedings and later through remand report, having raised serious doubts on the information provided by the asessee, the burden u/s 68 had shifted to the asessee which the assessee miserably failed to discharge ?

(b) Without prejudice to the above, the ITAT has grossly erred as the final fact finding authority in observing that the AO did not conduct independent inquiries since, assuming for a moment (without accepting) that the findings of the lower authorities had certain shortcomings in proper inquiry, in view of serious doubts raised by the lower authorities, the obligation to conduct proper inquiry shifts to the Tribunal and Tribunal cannot simply delete addition made by the lower authorities on ground of lack of inquiry, as held in the case of Jansampark Advertising & Marketing (P) Ltd. (2015) 56 taxmann.com 286 (Delhi)?

3. Whether on the facts and circumstances of the case and in law, the findings given by ITAT in its order suffers from

> perversity as it failed to allude to relevant facts, misread the evidence and its probative value and the legal position, which itself gives rise to question of law in view of ratio of decisions in several cases including in the case of Sudarshan Silk and Sarees 300 ITR 205 (SC)?"

3. In short the question that arises for consideration is that if the assessee could not produce any single party and the documents available in the public domain would not prove identity, creditworthiness and genuineness of transactions.

4. Brief facts of the case are that the assessee herein is an individual and provides financial assistance. He filed his return of income for the year in consideration declaring his total income of Rs.3,49,810/-. During the course of proceedings the Assessing Officer (AO) noticed that the assessee is rising loans from several parties. In order to examine those loans, the AO issued notices under Section 133(6) of the Act to the creditors, but did not get reply from 15 creditors. Before the AO, the assessee submitted that the creditors are not cooperating and accordingly, furnished available details as the assessee had repaid the loans to almost all the creditors prior to the commencement of present assessment proceedings.

5. Being aggrieved by the action of the AO, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-33 Mumbai which passed the following orders :

> "14. Considering the totality of the facts and circumstances of the issue involved, in my considered opinion, the ratio of the judgments in the Pavankumar M Sanghvi vs. ITO (supra) and Pr.CIT vs. Bikran Singh (supra) are fully applicable to the facts and the instant case. Hence, respectfully following these discussions, it is held that the AO has correctly treated the unsecured loans amounting to Rs.373 lakhs taken by the

> appellant from fifteen (15) parties as unexplained cash credits u/s 68 of Income Tax Act. Hence, the addition is confirmed. Thus, the sole ground of appeal is rejected."

6. Assessee being aggrieved by the order passed by the CITA has preferred an Appeal before the Income Tax Appellate Tribunal, Mumbai "D" Bench, Mumbai which has allowed the appeal and passed the following orders :

> "20. In view of the foregoing discussions, we are of the view that the assessee has discharged initial burden placed upon him u/s 68 of the Act in respect of all the creditors aggregating to Rs.3.73 crores. Accordingly, we are of the view that the tax authorities are not justified in assessing the above said amount u/s 68 of the Act. Accordingly, we set aside the order passed by ld. CIT(A) and direct the AO to delete the addition of Rs.3.73 crores u/s 68 of the Act."

7. Being aggrieved by the order passed by the Income Tax Appellate Tribunal, Mumbai, the present appeal has been preferred by the Revenue before this Court.

8. Learned counsel for the Revenue submitted that the AO did not commit any error in issuing notices to the assessee as well as rightly treated the unsecured loans amounting to Rs.3.73 crores taken by the assessee from several parties as unexplained cash credit under Section 68 of the Act of 1961. He further submitted that the present case involves obtaining loans from various shell companies. He also submitted that as per Section 105 of the Companies Act, no person can be a Director of more than 20 companies and in the present case, various shell companies were formed and amount were drawn from them, therefore, the AO as well as the Court of Commissioner of Income Tax (Appeals) has rightly passed the impugned orders but he learned Income Tax Appellate Tribunal without proper analysis of the facts of the case as well as without applying the law

laid down by the High Courts and Apex Court has passed a perverse order and reversed the findings of the Income Tax Appellate Tribunal.

9. Learned counsel for the appellant has placed reliance on the case of **Sudarshan Silk and Sarees 300 ITR 205 (SC)** in which it is held that if the Income Tax Appellate Tribunal has passed perverse order then the same amounts to substantial question of law.

10. Heard learned counsel for the parties and perused the substantial questions of law.

11. Before dealing with the aforesaid controversy, it would be expedient to refer to Section 260-A of the Act of 1961. The provisions, relevant for our purpose, read thus:

> 260-A. 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.
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> (2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commission 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 Commssioner or Commissioner;
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> (b) xxx
>
> (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
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> (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 a 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 reasons 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.

12. From a bare reading of the Section, it is apparent 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.

13. While explaining the import of the said expression, the Apex Court in case of ***Sir Chunilal V. Mehta & Sons, Ltd. Vs. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314***, observed that:

> "6. 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."

14. Similarly, in ***Santosh Hazari Vs. Purushottam Tiwari, (2001) 3 SCC 179*** it was 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."

15. In ***Hero Vinoth (Minor) Vs. Seshamma, (2006) 5 SCC 545***, the Apex 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 well recognised 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."

16. 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 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 255; 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. The Apex Court in case of ***K.Ravindranathan Nair vs. CIT, (2001) 1 SCC 135*** has observed as under :

> "The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it."

18. When tested on the anvil of the afore-noted legal principles, we are of the opinion that in the instant case no substantial question of law arises from the order of the Tribunal as the appellant has raised all the questions of facts and have disputed the fact findings of the ITAT in the garb of substantial questions of law which is not permitted by the statute itself. This Court refrains from entertaining this appeal as there is no perversity in the order passed by the ITAT since the ITAT has dealt with all the grounds raised by the appellant in the order impugned and has passed a well reasoned and speaking order taking into consideration all the material available on record. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference with the

concurrent findings of the CIT (A) as well as the ITAT therewith by this Court is not warranted.

19. For the aforesaid reasons, we have no hesitation in holding that no question of law, much less any substantial question of law arises from the order of the Tribunal requiring consideration of this court. There is no merit in the appeal as making addition/deletion cannot be said to be erroneous and prejudicial to the interest of revenue. Thus, in our opinion, the present case does not involve any substantial question of law so as to meet the provisions of Section 260(A) of the Act for admitting the appeal.

20. In view of the aforesaid discussion, we do not find any merit in this appeal, which in our opinion deserves to be and is hereby dismissed in *limine*.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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