

SUPREME COURT OF INDIA

*Vijay Kumar Talwar*

v.

*Commissioner of Income-tax, Delhi*

**D.K. JAIN**

**AND T.S. THAKUR, JJ.**

CIVIL APPEAL NOS. 3265-3266 OF 2003

DECEMBER 6, 2010

**Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1983-84 - Assessee was partner in a firm - Said firm dissolved on 1-4-1982 and assessee took over business of firm - Thereafter from 21-10-1982, he started a proprietary concern - On 27-5-1983, a search took place at assessee's premises - One of registers seized during search revealed cash receipts in name of 15 persons during period of April, 1982 to October, 1982 - Assessee stated that said cash receipts were realisations of sales effected in earlier years by erstwhile firm - He filed confirmations of 7 parties but when letters were sent to said parties, same were returned by post office marked 'not known' - Other parties also either did not respond or denied any relationship with firm - In circumstances, Assessing Officer treated said receipts as unexplained and made addition under section 68 - On appeal, Commissioner (Appeals) as well as Tribunal upheld findings and order of Assessing Officer - Whether Tribunal being a final fact finding authority, in absence of demonstrated perversity in its finding, interference therewith by Court was not warranted - Held, yes**

**FACTS**

The assessee was partner in a firm. The said partnership firm was dissolved with effect from 1-4-1982 and as per the dissolution deed, the assessee took over the business of the erstwhile firm. Thereafter, from 21-10-1982, the assessee started a proprietary concern. During a search at the assessee premises certain incriminating documents were recovered and seized. One of the registers seized revealed certain cash receipts in the name of 15 persons, most of which were purportedly received during the period of April, 1982 to October, 1982. The assessee explained that the said cash receipts were in the nature of realisations from the past debtors of the erstwhile firm. In order to appreciate the said stand, the Assessing Officer called for the account books of the erstwhile firm for the relevant period, but the assessee failed to produce same. Therefore, the Assessing Officer rejected the assessee's explanation and added amount of cash credits as the assessee's income under the head 'Unexplained cash receipts'. On appeal, the Commissioner (Appeals) confirmed the addition made by the Assessing Officer. On second appeal, the Tribunal remitted the matter back to the Assessing Officer for *do novo* consideration. Pursuant thereto, the Assessing Officer asked the assessee to file confirmation of the aforesaid parties. When the Assessing Officer sent letters to the six parties, whose addresses had been supplied, three did not respond, while two others denied any relationship with the firm, and remaining one letter was returned by the post office with remarks 'not known'. Similarly, when letters were sent to parties who had filed

confirmations, three of those letters were returned by the post office marked 'not known', and another one as 'no claims'. One of the parties denied any relationship with the firm. In light of those circumstances, the Assessing Officer confirmed the original assessment. On appeal, the Commissioner (Appeals) and the Tribunal upheld the addition. The assessee moved an application under section 254(2) but same was also dismissed. The appeal to the High Court was also dismissed.

On appeal to the Supreme Court :

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**HELD**

*It is manifest from a bare reading of section 260A 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. [Para 18]*

*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. [Para 21]*

*Examined on the touch-stone of the afore-noted legal principles, in the instant case, the High Court had correctly concluded that no substantial question of law arose from the order of the Tribunal. All the authorities below, in particular the Tribunal, had observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under section 68, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of account. In the absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question, viz., realization from the debtors of the erstwhile firm, in the opinion of the Assessing Officer, was not satisfactory. It is well settled that in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to Income-tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. On a conspectus of the factual scenario, the conclusion of the Tribunal to the effect that the assessee had failed to prove the source of the cash credits could not be said to be perverse, giving rise to a substantial question of law. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference therewith by the Court was not warranted. [Para 22]*

*For the foregoing reasons, no question of law, much less any substantial question of law arose from the order of the Tribunal requiring consideration of the High Court. Therefore, the appeal was to be dismissed. [Para 23]*

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**CASES REFERRED TO**

*Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. AIR 1962 SC 1314 [Para 18], Santosh Hazari v. Purushottam Tiwari [2001] 3 SCC 179 [Para 19], Hero Vinoth (Minor) v. Seshammal [2006] 5 SCC 545 [Para 20], Madan Lal v. Mst. Gopi*

[1980] 4 SCC 255 [Para 21], *Narendra Gopal Vidyarthi v. Rajat Vidyarthi* [2009] 3 SCC 287 [Para 21], *Commissioner of Customs (Preventive) v. Vijay Dasharath Patel* [2007] 4 SCC 118 [Para 21], *Metroark Ltd. v. CCE* [2004] 12 SCC 505 [Para 21], *West Bengal Electricity Regulatory Commission v. CESC Ltd.* [2002] 8 SCC 715 [Para 21], *Sumati Dayal v. CIT* [1995] 80 Taxman 89 (SC) [Para 22] and *CIT v. P. Mohanakala* [2007] 161 Taxman 169 (SC) [Para 22].

**K.R. Manjani, Pankaj Kumar Singh, Dr. Vinod Tewari and K.L. Janjani** for the Appellant. **R.P. Bhatt, H.R. Rao, Prateek Jalan, Vikas Malhotra and B.V. Balaram Das** for the Respondent.

## JUDGMENT

**D.K. Jain, J.** - Challenge in these two appeals, by special leave, is to the orders dated 21-12-2001 and 19-2-2002 whereby the High Court of Delhi dismissed : (i) the appeal filed by the appellant herein under section 260A of the Income-tax Act, 1961 (for short “the Act”) in ITA No. 202 of 2001, holding that the order of the Income-tax Appellate Tribunal, New Delhi (for short “the Tribunal”) did not give rise to any substantial question of law; and (ii) the review petition preferred by the appellant against order dated 21-12-2001, holding that the petition was not maintainable.

2. Shorn of unnecessary details, the facts material for adjudication of the present appeals may be stated. These are :

The appellant (hereinafter referred to as “the assessee”) was a partner in a firm, named and styled as M/s Des Raj Tilak Raj, having its business at Delhi, with a branch at Calcutta. The said partnership firm was dissolved with effect from 1-4-1982. As per the dissolution deed, the assessee took over the business of the Calcutta branch of the erstwhile firm. Thereafter, from 21-10-1982, the assessee started a proprietary concern by the name of M/s Des Raj Vijay Kumar.

3. On 27-5-1983, a search took place at the assessee’s premises during which certain incriminating documents were recovered and seized. During the course of assessment proceedings for the assessment year 1983-1984, for which the previous year ended on 31-3-1983, the Assessing Officer examined the seized record. One of the registers so examined, revealed cash receipts of Rs. 3,49,991 in the name of 15 persons, most of which were purportedly received during the period of April, 1982 to October, 1982. When the Assessing Officer sought an explanation from the assessee with regard to the said cash credits in the register, the assessee merely stated that the cash receipts were in the nature of realisations from the past debtors of the erstwhile firm. In order to appreciate the said stand, the Assessing Officer called for the account books of the Calcutta branch of the erstwhile firm for the relevant period, but the assessee failed to produce them. The Assessing Officer also examined the assessee’s brother, a partner in the erstwhile firm, who also stated that the account books were not available.

4. Having noted that the outstanding realisations of the Calcutta branch in the preceding years varied from Rs. 25,000 to Rs. 30,000, the Assessing Officer held that the assessee’s submission that cash receipts of Rs. 3,49,991 related to earlier years was untenable. Therefore, *vide* order dated 20-2-1986, the Assessing Officer added a sum of Rs. 3,49,991 as assessee’s income under the head “unexplained cash receipts.”

5. Aggrieved, the assessee appealed to the Commissioner of Income-tax, (Appeals)-XV, New Delhi, who *vide* his order dated 6-12-1989, dismissed the same and confirmed the addition made by the Assessing Officer.

6. Being still aggrieved, the assessee carried the matter in appeal before the Tribunal. *Vide* order dated 27-9-1994, the Tribunal, while partly allowing the appeal, remitted the matter back to the Assessing Officer for *de novo* adjudication. The Tribunal observed that :

“We find that some of the entries pertained to the period when the erstwhile firm was in existence whereas the assessee did not conduct business at Calcutta in a proprietary capacity but was only a partner in the erstwhile firm. The Assessing Officer himself observed in the assessment order that the cash receipts are from April 1982 to October, 1982 *i.e.*, prior to the start of the assessee’s proprietary business in the name of M/s Desraj Vijay Kumar. As against this, we find that some of the entries are dated prior to April, 1982 when the erstwhile firm was in existence. Then again, it is not known as to what happened to the income between the period 1-4-1982 to October, 1982 as the erstwhile firm is supposed to have been dissolved with effect from 1-4-1982 and as per the assessee’s version the proprietary business was started from October 1982. There is no information made available to us as to whether the Department initiated any action under section 148 to subject the cash receipts aggregating Rs. 3,49,991 in the hands of the erstwhile firm. . . . .

11. In view of the aforesaid discussion, we although taking the view that the onus on the facts and circumstances of the case squarely lies on the assessee, hold that the material has to be reconsidered in light of the afore-said observations.”

7. Pursuant thereto, on 17-5-1995, the Assessing Officer asked the assessee to file confirmations of the 15 parties, in whose names cash credit entries appeared in the register seized during the search. In his reply dated 22-5-1995, the assessee stated that the said cash receipts were realisations of the sales effected in the earlier years by the erstwhile firm. Subsequently, the assessee was given three more opportunities on 2-6-1995, 16-6-1995, and 3-7-1995 to produce fresh evidence, which were not availed of by him. *Vide* letter dated 28-7-1995, the assessee was given a final opportunity to file confirmations of the 15 parties, with their complete addresses. In his reply, the assessee filed the confirmations of 7 parties, with the address of 6 other parties. The Assessing Officer considered the two remaining parties as non-existent. It is pertinent to note that all the seven confirmations filed by the assessee were identical, and did not contain either a date or the GIR No. of the confirming party; and merely stated that the concerned party had dealings with the erstwhile firm, and it had made purchases from them in the year ending 31-3-1982 and had made payments prior to October, 1982; and since the matter was really old, the books of account of the firm were not available.

8. When the Assessing Officer sent letters to the six parties, whose addresses had been supplied, three did not respond, while two others denied any relationship with the firm, and remaining one letter was returned by the post office with remarks “not known” Similarly, when letters were sent to parties who had filed confirmations, three of those letters were returned by the post office marked “not known.”, and another one as “no claims”. One of the parties denied any relationship with the firm. In light of these

circumstances, the Assessing Officer, *vide* order dated 19th March, 1996, confirmed the original assessment.

**9.** The assessee preferred an appeal before the Commissioner of Income-tax, (Appeals)-III, which was dismissed *vide* order dated 16-12-1998. The Commissioner observed that :

“The contention of the appellant is apparently unacceptable. Any business realisations of the partnership would have been shared by the erstwhile partners. The cash receipts of Rs. 3,49,991 as per the seized material is, therefore, held to belong to the appellant and assessable as unexplained receipts in the hands of the appellant. The assessment of appellant’s income including the aforesaid receipt is, therefore, confirmed and the appeal is dismissed.”

**10.** Still not being satisfied, the assessee carried the matter in appeal before the Tribunal. The Tribunal, *vide* order dated 23-10-2000, while partly allowing the appeal, held that the addition of Rs. 3,49,991 was correct. It observed that :

“We are also of the opinion that the confirmations filed by the appellant are of no use because they have not been co-related with the transactions alleged to have been found entered in the register seized during the time of search if it represents the realization of outstanding amount on sales, this could have been proved with the cross reference to the entries in the register. We cannot ignore the fact that the enquiry letters sent by the Assessing Officer remained unserved, unanswered and denial.”

**11.** On 22-2-2001, the assessee moved an application under section 254(2) of the Act before the Tribunal for rectification of mistakes in the order of the Tribunal dated 23-10-2000. It was pleaded that the Tribunal had erred in observing that the assessee’s premises were raided due to heavy sales, and that cash amounting to Rs. 3,49,991 was seized; that the Assessing Officer had issued ITNS 150, which the assessee had filed before the Commissioner (Appeals); and that the Tribunal did not take into consideration the arguments and various judgments relied on by the assessee. *Vide* order dated 25-9-2001, the Tribunal rejected the rectification petition on the ground that :- (i) the Tribunal had relied on the Assessing Officer’s order in relation to the factual position, and there was no reason to interfere with the same; (ii) while it was true that cash amounting to Rs. 3,49,991 was not recovered, but the said amount was entered in the register which was recovered; and therefore, this would not affect the findings of the Tribunal; (iii) the remarks in relation to ITNS 150 were not made by the Tribunal, but by the department’s representative and (iv) re-considering the judgments relied on, and the arguments made, would tantamount to a review, which power the Tribunal is not authorised to exercise under section 254(2) of the Act.

**12.** The assessee preferred an appeal before the High Court under section 260A of the Act. As already stated, the High Court, *vide* judgment dated 21-12-2001, dismissed the appeal of the assessee, observing that :

“To us it appears that the findings recorded by the Commissioner of Income-tax as also the Income-tax Appellate Tribunal are pure findings of fact. Appreciation of evidence does not fall within the realm of this Court’s jurisdiction under section 260A of the Income-tax Act. . . . Having regard to the fact and circumstances of this case we are, therefore, of the opinion that no question of law far less any substantial question of law arises for consideration in this appeal.”



debatable, not previously settled by law of the land or a binding precedent, 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) v. Seshammal* [2006] 5 SCC 545, 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 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.”

**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 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 v. Mst. Gopi* [1980] 4 SCC 255, *Narendra Gopal Vidyarthi v. Rajat Vidyarthi* [2009] 3 SCC 287 *Commissioner of Customs (Preventive) v. Vijay Dasharath Patel* [2007] 4 SCC 118, *Metroark Ltd. v. CCE* [2004] 12 SCC 505 and *West Bengal Electricity Regulatory Commission v. CESC Ltd.* [2002] 8 SCC 715.

**22.** Examined on the touch-stone of the afore-noted legal principles, we are of the opinion that in the instant case the High Court has correctly concluded that no substantial question of law arises from the order of the Tribunal. All the authorities below, in particular the Tribunal, have observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under section 68 of the Act, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of account. In the absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question *viz.*, realisation from the debtors of the erstwhile firm, in the opinion of the Assessing Officer, was not satisfactory. It is well settled that in view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to Income-tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the nature and source thereof is, in the opinion

of the Assessing Officer, not satisfactory. *See : Sumati Dayal v. CIT* [1995] 80 Taxman 89 (SC) and *CIT v. P. Mohanakala* [2007] 161 Taxman 169 (SC). We are of the opinion that on a conspectus of the factual scenario, noted above, the conclusion of the Tribunal to the effect that the assessee has failed to prove the source of the cash credits cannot be said to be perverse, giving rise to a substantial question of law. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference therewith by this Court is not warranted.

**23.** For the foregoing 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 the High Court. There is no merit in the appeals. Both the appeals are dismissed accordingly with costs, quantified at Rs. 20,000.