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Neutral Citation No.-2024 AHC: 183417-DB

Court No. 40

INCOME TAX APPEAL No. - 85 of 2024

Pr. CIT, BAREILLY, UP

v.

DHARAM SINGH

For the Appellant :- Sri Manu Ghildyal, Advocate
For the Respondent:- Sri Ambleshwar Pandey & Sri Ramesh Kumar, Advocates

Hon'ble Shekhar B. Saraf.J.
Hon'ble Vipin Chandra Dixit, J.

(Judgement dictated in open Court by Shekhar B. Saraf, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") wherein the revenue is challenging an order dated June 18, 2024 passed by the Income Tax Appellate Tribunal (hereinafter referred to as ‘Tribunal’), Delhi Benches "B", New Delhi in ITA No.821/Del/2022 (Assessment Years 2017- 18).

3. The factual matrix of the present case is that the assessment order was completed by the Assessing Officer under Section 143(3) of the Act. Subsequently, the Principal Commissioner of Income Tax exercised his jurisdiction under Section 263 of the Act and revised the order passed by the Assessing Officer on the ground that the assessment carried out was prejudicial to the interest of revenue and thereby set aside the assessment order and directed for *de novo* assessment. The said order passed by the Principal Commissioner of Income Tax was challenged before the Tribunal, which upon examination in great detail of the inquiries carried out by the Assessing Officer especially in respect of the cash deposit of Rs.91 lakhs, has came to the conclusion that proper inquiry was carried out by the Assessing Officer and only thereafter assessment order was passed.

4. In the present appeal the Appellant- Department has proposed the following substantial questions of law from the impugned order dated June 18, 2024 passed by Tribunal, which need to be determined by this court:-

> *i. Whether on the facts and circumstances of the case and in law, the Tribunal has erred in holding that the Assessing Officer while passing the assessment order u/s 143(3) dated 21.06.2019 has verified the details asked for by him and has conducted enquiries before making assessment whereas the Principal Commissioner of Income Tax in his order u/s 263 of the Act has found that no proper enquiry has been conducted by the AO on issue of cash deposited during demonetization period, scrap sale and non-submission of audit report while making the assessment of the case?*
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> *ii. Whether on the facts and circumstances of the case and in law, the Tribunal is justified in holding that the exercise of jurisdiction u/s 263 of the Act by the Principal Commissioner of Income Tax in the present case is invalid, unsustainable and the assessment order cannot be held to be erroneous and prejudicial to the interest of the Revenue while the Principal Commissioner of Income Tax has initiated proceedings of 263 after thorough observation of the assessment record?*

5. This Court dealt with the first substantial question of law by examining the relevant portion of the impugned order of Tribunal. The relevant portion of the decision of Tribunal is extracted below:

> *"14. As could be seen from the materials placed on record, beginning from 11.08.2018 to 07.06.2019, a period of almost one year, the Assessing Officer has conducted thorough inquiry by issuing a notice under section 143(2) as well as notices under section 142(1) of the Act with questionnaire calling upon the assessee not only to furnish the details of cash deposits in the bank account, but also explain the source thereof. The Assessing Officer has also called upon the assessee to explain the reason for low profit compared to the turnover. It is a matter of record that the assessee has responded to each of the queries raised by the Assessing Officer in the questionnaire by explaining the source of cash deposits as well as various other details called for. Not only the Assessing Officer has conducted threadbare inquiry on various issues by issuing number of notices to the assessee, but he has also conducted discreet inquiries from third parties, including the banks, wherein, the assessee has held account by issuing notices under section 133(6) of the Act. The result of such inquiries has been meticulously noted down by the Assessing Officer in the order-sheet maintained in the assessment record."*

6. Furthermore, this Court perused the order of the Tribunal with regard to the second substantial question of law. The relevant portion of the decision of the Tribunal is extracted below:

> *"17. The primary conditions for invoking section 263 are, the order sought to be revised must be erroneous and at the same time prejudicial to the interest of Revenue. Unless, these twin conditions are satisfied, section 263 of the Act cannot be invoked. In the facts of the present case, learned PCIT has put much emphasis on Explanation 2 to section 263 of the Act. In our view, Explanation 2 to section 263 of the Act does not invest unbridled power with the revisionary authority so as to empower him to invoke revisionary jurisdiction arbitrarily. The words appearing in Explanation 2(a) to the effect that "the order is passed without making inquiries or verification which could have been made", certainly do not mean that on mere allegation that in the opinion of the revisionary authority the Assessing Officer has not made inquiries or verifications which should have been made, revisionary power can be invoked. Allegation of lack of enquiry by the Assessing Officer has to be substantiated based on record and cannot be conjured out of thin air."*

7. Upon a perusal of the impugned order, we find that the Tribunal has gone into the details of the questionnaire issued by the Assessing Officer, examined the inquiry carried out by the Assessing Officer in detail and also examined the replies given by the assessee. It is only after having carried out the said examination, the Tribunal has came to the finding that it was not possible under any circumstances to conclude that the Assessing Officer has misstated the fact or had recorded false order sheet entries. The Tribunal further held that the only conclusion one can reach is that the allegation made by the Principal Commissioner of Income Tax that the Assessing Officer has not recorded any finding with regard to cash deposit during demonetization period, is not based on the material on record or rather contrary to the material on record. The Tribunal further went ahead and held that the twin conditions of the assessment order being erroneous and at the same time prejudicial to the interest of the revenue in order to invoke the power of Principal Commissioner of Income Tax under Section 263 of the Act was not fulfilled as the Assessing Officer had made all inquiries and verifications as required under the law.

8. Before delving into the present controversy, it would be expedient to examine the scope of jurisdiction of this Court under section 260A of the Act. It is a settled proposition that the Tribunal is the final authority to decide on the issue of facts. The High court can only interfere in the order of Tribunal if there exists a substantial question of law.

9. A Constitution Bench of the Supreme Court headed by Hon'ble B.P. Sinha, the Chief Justice of India in case of **Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.** reported in **1962 SCC OnLine SC 57** has laid down the following tests to determine whether a substantial question of law is involved or not. The tests are:

(a) whether directly or indirectly it affects substantial rights of the parties, or

(b) the question is of general public importance, or

(c) whether it is an open question in the sense that the issue is not settled by pronouncement of this Court or Privy Council or by the Federal Court, or

(d) the issue is not free from difficulty, and

(e) it calls for a discussion for alternative view.

The relevant paragraph of the aforesaid judgment is extracted below:

> *"6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. 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 if 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."*

10. The Delhi High Court in **Pr. CIT v. Bhadani Financiers Pvt. Ltd.** reported in **(2022) 447 ITR 305** has observed what would amount to substantial question of law for filing an appeal under Section 260A of the Act. The relevant paragraph of the judgment is extracted below:

> *"7. 'Substantial' means 'having substance, essential, real, of sound worth, important or considerable.' To be 'substantial', a question of law must be debatable, not previously settled. The Supreme Court and several High Courts have held that a substantial question of law is involved if it directly or indirectly affects substantial rights of the parties or it is of general public importance, it is an open question in the sense that the issue has not been settled by a pronouncement of the court or it is not free from difficulty or it calls for a discussion for alternate views.* ***A High Court under section 260A of the Act has limited jurisdiction to interfere with findings of fact recorded by the Tribunal. If findings of Tribunal are irrational, perverse or unreasonable, then only interference of court would be justified. It would also be justified if a finding of fact is arrived at by the Tribunal without any evidence.*** *Section 260A is akin to section 100 of the Code of Civil Procedure, 1908. (see Sampath Iyengar's Law of Income Tax)."*
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> *(Emphasis added)*

11. In the instant appeal the department has only challenged the fact finding of the Tribunal. A catena of Supreme Court judgments have concluded that in relation to facts, no substantial question of law would arise unless the finding of fact is perverse. A factual decision is perverse when it is without any evidence or when it cannot be reasonably arrived at by a prudent man. Finding based upon surmises, conjectures or suspicion or when they are not rationally possible, have to be struck down. One may therefore examine the interpretation of 'perversity' by various Courts including the Supreme Court.

12. The Supreme Court in the case of **Arulvelu v. State** reported in **(2009) 10 SCC 206** has defined 'perversity' by following various judgments. The relevant paragraphs of the judgment are extracted below:

> *"24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad ((2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*

25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665: AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR Ir 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

"Perverse. Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. Longman Dictionary of Contemporary English, International Edn.

Perverse. Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn.

Perverse. Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse. Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

"Perverse. A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

13. The Supreme Court in the case of **S.R. Tewari v. Union of India** reported in **(2013) 6 SCC 602** has laid down the attributes of perversity. The relevant paragraph is extracted below:

> *"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635: 1985 SCC (L&S) 131: AIR 1984 SC 1805], Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10: 1999 SCC (L&S) 429: AIR 1999 SC 677], Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636: (2010) 1 SCC (Cri) 372: AIR 2010 SC 589] and Babu v. State of Kerala [(2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179].)"*

14. The Delhi High Court in case of **CIT v. Ajay Kapoor** reported in **2013 SCC OnLine Del 2779** has further elaborated as to what constitutes 'perversity'. The relevant paragraphs of the judgment are extracted below:

> *"14. Perversity, in the present case, is occasioned due to two reasons: firstly, by wrongly placing onus on the revenue though the facts were in personal knowledge of the assessee, and secondly, by ignoring the admission of the respondent that they had indulged in unaccounted sales of Rs. 9.7 crores. In spite of admission and the seized document, it has been observed that there was no material with the revenue to prima facie justify any addition towards unrecorded investment in stock. Allegations, in the present case, are not based upon weighing of evidence but for altogether a wrong decision. The decision suffers from vice of irrationality, rendering it infirm in law. In Municipal Committee, Hoshiarpur v. Punjab SEB (2010) 13 SCC 216 it has been held that:*
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> > *"28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483: AIR 2010 SC 2685].)"*

15. Earlier in Dhirajlal Girdharilal v. CIT (1954) 26 ITR 736 (SC) it was observed:-

> *"....if the court of fact, whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arise....*
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> *.....It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises,"*

16. In CIT v. Daulat Ram Rawat Mull (1973) 87 ITR 349 it has been held that onus of proving what is apparent is not real is on the party who claims it to be so. There should be direct nexus between the conclusions of fact arrived at, or inferred, and the primary facts upon which the conclusion is based. When irrelevant consideration and extraneous materials form the substratum of an order, or the authority has proceeded in a wrong presumption which is erroneous in law, as in the present case, question of law arises and when the said contention is found to be correct, then the order is perverse. A factual decision is perverse when it is without any evidence or when the factual decision, in view of the fact on record, cannot be reasonably entertained. Finding based upon surmises, conjectures or suspicion or when they are not rationally possible have to be struck down. In CIT v. S.P. Jain (1973) 87 ITR 370 (SC) it has been observed that a factual conclusion is regarded as perverse when no person duly instructed or acting judicially could upon the record before him, have reached the conclusion arrived at by the tribunal/authority."

15. In light of the judgments of the Supreme Court and High Courts cited above, we are of the view that unless there is any perversity in finding of facts, no substantial question of law would arise. Furthermore, for the Tribunal's fact finding to be perverse, it would have be established that the finding of fact by the Tribunal directly or indirectly affects substantial rights of the assessee in the sense that it is such as could not have been reasonably arrived at on the material placed on record before the Tribunal. In the present factual matrix, it is crystal clear that the Tribunal has examined the facts in great detail, and only thereafter, held in favour of the assessee.

16. Therefore, we do not find any perversity in the impugned order and there exists no reason to admit this appeal as there is no substantial question of law involved. The appeal filed under Section 260A of the Act can only be sustained if there was perversity in the findings of the Tribunal which would have amounted to a substantial question of law. In the present case, we do not find anything perverse in the order passed by the Tribunal and accordingly, dismiss the appeal on the ground that no substantial question of law is present in the instant appeal.

21.11.2024
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(Vipin Chandra Dixit, J.) (Shekhar B. Saraf.J.)