(2004) 04 MP CK 0051

In the Madhya Pradesh High Court

Case No : IT Appeal No. 1 of 2004

Commissioner of Income Tax APPELLANT

Vs

Ashok Kumar Jain RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:
Income Tax Act, 1961 — Section 158BC, 260A

Citation : (2004) 190 CTR 143 : (2005) 272 ITR 385

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an appeal filed by the Revenue u/s 260A of the IT Act against an order dt. 11th Aug., 2003 passed by Tribunal in case No. IT(SS)A 3 & 4/Ind/2002.

2. Having heard the learned counsel for appellant and having perused the record of the case, we are of the considered view that sine qua non for entertaining an appeal u/s 260A of IT Act namely existence of substantial question of law is not present in this appeal. In other words, we have not been able to notice any substantial question of law, which can be said to have arisen out of the order rendered by the Tribunal in its appellate jurisdiction. As a consequence, we are afraid, we cannot admit this appeal and has to dismiss in limine holding that appeal does not involve any substantial question of law.

3. Dispute essentially centres around in relation to certain additions/deletions made by AO in the total gross income of the assessee, who was being assessed for a block period 1989-90 to 1999-2000 u/s 158BC of the IT Act. It is in the course of these assessment proceedings, a question arose as to three additions which are subject-matter of the appeal, can be assessed in the hands of the assessee as his true income? Assessee had his explanation to offer in support of

his contention whereas Revenue had their contention to say that it does belong to the assessee and, their family members. It is essentially this question which was gone into by the taxing authorities. To begin with, it was initially gone into, by the AO, who was making the assessment u/s 158BC of the IT Act and later on was probed by the Tribunal on facts and in the context of explanation offered by the assessee.

4. By detailed order passed by the Tribunal, the contention of the assessee was accepted in part and three additions which were sought to be made basis in this appeal were deleted thereby repelling the contention of Revenue. It is this finding which is impugned by the Revenue in this appeal.

5. As observed supra, the issue involved and sought to be raised is essentially a question of fact and does not involve any question of law much less substantial question of law. The jurisdiction of the High Court u/s 260A of the IT Act is confined to examination of substantial question of law and not even question of law much less question of fact. This Court cannot undertake nor embark upon any factual enquiry by appreciating evidence and explanation offered by the assessee in regard to the addition/deletion per se. The finding recorded on fact which is capable of being recorded by the Departmental authorities cannot be liable to be interfered with, in exercise of powers conferred on the High Court u/s 260A of IT Act unless it is shown that the finding is so perverse that no judicial man can ever reach such a conclusion or it is against the settled principles of law or de hors the subject, such does not appear to be a case of that nature.

6. We have gone through the order passed by the Tribunal and in our opinion it records a categorical finding by assigning cogent reasons. We would not like to disturb such a finding of fact and while concurring with such a finding, dismiss the appeal in limine.