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In the Madhya Pradesh High Court

Case No : ITA No. 69 of 2004 15 September 2005

Commissioner of Income Tax — APPELLANT

Vs

Patel and Co. — RESPONDENT

Date of Decision : 15-09-2005

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

Citation : (2006) 154 TAXMAN 545

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

Bench : Full Bench

Advocate : R.L. Jain and Ku. V. Mandlik, for the Appellant;

Judgement

This is an appeal filed by the revenue (Commissioner of Income Tax) u/s 260A of the Income Tax Act against an order, dated 20-2-2004, passed by Tribunal in I.T.A. No. 828/Ind/97 and I.T.A. No. 466/ Ind/97.

2. The question that arises for consideration in this appeal is : whether appeal involves any substantial question of law within the meaning of section 260A of the Act ?

3. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the appellant.

4. Having heard learned counsel for the appellant and having perused record of the case, we are of the opinion that appeal does not involve any question of law much less substantial question of law within the meaning of section 260A ibid and hence, the appeal has no merit rendering its dismissal in limine.

5. For the assessment year in question i.e., 1993-94 the issue arose in assessment proceedings regarding some cash credit entries standing in the name of Rajendra Kumar. It is this question namely, whether entries of cash credit are genuine or not and whether any benefit can be extended to such entries to assessee was gone into in a fact finding inquiry held by assessing officer. It is in

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this inquiry, the Tribunal held that entries are genuine and cash credit benefit has to be given to the assessee. It is against this finding, the revenue has come up in appeal.

6. In our considered opinion, what is involved in appeal is a pure question of fact and nothing else. The question, whether entries are genuine ? Whether there was any money transaction between assessee and its creditor or debtor as the case may be are pure questions of fact, which are required to be proved on evidence both oral and documentary. Once any finding is returned one way or other then in such event, it becomes a finding of fact calling no interference in the impugned order. In other words, in recording such finding, no issue of law as such is involved much less substantial question of law.

7. It is only when the finding of fact recorded by the Tribunal is perverse to the extent that no judicial man can ever reach, or that it is against the evidence brought on record or that it is recorded against any provision of law, a case for interference is called for, else not.

8. Since, in this case, no such infirmity appears on the face of the finding recorded by the Tribunal while passing the impugned order and hence, no case for interference is made out. Indeed, mere perusal of the impugned order shows that the Tribunal has gone into facts and then recorded a clear finding of fact upholding the cash credit entries in favour of assessee. Such finding in our humble view does not call for any interference being pure finding of fact.

9. Accordingly and in view of aforesaid discussion, the appeal fails and is dismissed in limine.

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