(2012) 05 CHH CK 0034

In the Chhattisgarh High Court

Case No : Income Tax Appeal No. 37 of 2006

Income Tax Officer Raipur — APPELLANT

Vs

Ram Narayan Agrawal — RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:
Income Tax Act, 1961 — Section 260A, 260A(4), 260A(6)

Citation : (2012) 3 CGBCLJ 73

Hon'ble Judges : Manindra Mohan Shrivastava, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Rajeev Shrivastava, for the Appellant; Malay Kumar Bhaduri, for the Respondent

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, J.—Heard. This is an appeal filed by the Revenue (Commissioner of Income Tax Act) u/s 260A of the Income Tax Act against the order dated 07.07.2006 passed by Income Tax appellate Tribunal (for short called `the Tribunal'') in ITA No. 264/Nag/2004.

2. By impugned order, the Tribunal allowed the appeal filed by the assesee and set aside the order of the Commissioner of Income Tax (Appeals).

3. So the question that arises for consideration in this appeal is whether the Tribunal was justified in allowing the assessee''s appeal or/ and whether this appeal involves any substantial question of law within the meaning of Section 260A ibid.

4. This appeal was admitted for final hearing on following substantial question of law:

Whether finding of fact arrived at by the Assessment authority & the Commissioner could have been disturbed by shifting burden of proof on department?

5. At the out set, learned counsel for the assessee (respondent) by taking recourse to the provisions of Section 260-A(6) of the Act, contended by raising an objection that the question of law framed by this Court at the time of admission of the appeal, quoted supra, does not constitute a substantial question of law and nor does it satisfy the rigour of substantial question of law within the meaning of section 260A ibid. He also urged that the said question also does not arise out of the order of the Tribunal if one look to the impugned order of the Tribunal. He also urged that it is equally vague in all respect and does not spell out any sense if read carefully because it refers to finding of assessing officer and that of the Commissioner of Appeals, but does not say anything about the finding of the Tribunal recorded in the impugned order, which is under challenge. Learned counsel contended that the respondent can always raise such objection at the time of hearing of the appeal by the respondent and hence, this Court should decide this objection as a preliminary objection.

6. Though learned counsel for the appellant (Revenue) made attempt to counter this objection, but having heard the submissions of the counsel and on perusal of the record of the case, we find force in the submission/objection of the learned counsel for the respondent.

7. On perusal of the question of law framed, it is amply clear that firstly question framed looks totally vague. Secondly, it is general in nature and does not specify which finding of fact recorded by the Tribunal (even the word Tribunal is not mentioned in question) is bad in law. Thirdly, when this appeal arises out of the order passed by the Tribunal, then the appellant was under legal obligation to point out the error of law in the findings recorded by the Tribunal in their order but not the errors in the order of assessment committed by the Income Tax Officer or/and Commissioner of Appeals. In the question of law of framed, we find that it is confined to referring to so-called errors committed by the Assessing Officer and Commissioner of Appeal in their respective orders, but do not refer to the so-called error of the Tribunal in their order. This makes the question of law totally redundant and unanswerable. Fourthly, in the absence of any specific challenge not being laid to a particular finding of fact recorded by the Tribunal, it is not possible for this Court to travel to the entire controversy decided by the Tribunal. It is for the reason that keeping in view the parameters contained in Section 260-A(4) of the Act, this Court can only confine itself for deciding the appeal by answering the question framed, but cannot travel outside the said question, which is not framed. Since the Tribunal decided the appeal on six questions and hence, it was obligatory upon the appellant to attack a specific question or questions decided by the Tribunal in favour of the assessee and got the question of law framed on such finding in this appeal as substantial question of law relating to such question. It is only then this Court would have been in a position to examine the legality and correctness of such finding with a view to find out as to whether such finding is liable to be upheld or reversed. It was not done in this appeal and hence, we cannot answer the question framed, which does not satisfy these parameters. Fifthly, even otherwise question of fact are

binding on this Court unless it has any legal error which is not noticed and lastly, since no prayer is made by the appellant as provided in Section 260A for either reframing the question already framed or for framing any additional questions which according to them are said to arise out of the case, and hence, we have to confine ourselves to whatever question already framed and then decide this appeal keeping in view the requirements of Section 260A ibid.

8. In the light of foregoing discussion, we are of the view that this appeal does not involve any question of law much less substantial question of law and what is framed as being substantial question of law do not satisfy the rigour of substantial question of law for the reasons mentioned above and hence, we have no option but to dismiss the appeal in limine.

9. In view of this, we do not wish to burden our order by mentioning the factual matrix of the case, because, it does not appear necessary. Indeed, the objection raised by the respondent could well be decided by mere reading of the question itself without referring to the factual matrix.

10. As a result of aforesaid discussion the appeal fails and is accordingly dismissed. No cost.