**(2003) 09 DEL CK 0111**

**In the Delhi High Court**

**Case No :** Income Tax A. No. 331 of 2003

Krishan Kumar Aggarwal APPELLANT

Vs

Assessing Officer RESPONDENT

**Date of Decision :** 12-09-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100
Income Tax Act, 1961 — Section 256, 260A

**Citation :** (2004) 266 ITR 380 : (2004) 138 TAXMAN 1

**Hon'ble Judges :** Madan B. Lokur, J;D.K. Jain, J

**Bench :** Division Bench

**Advocate :** K.R. Manjani, for the Appellant; R.C. Pandey and Ajay Jha, for the Respondent

## Judgement

D.K. Jain, J.—This appeal by the assessed u/s 260A of the Income Tax Act, 1961 (for short "the Act"), is directed against order dated May 14, 2003, passed by the Income Tax Appellate Tribunal, New Delhi (for short "the Tribunal"), in I. T. A. No. 1001/Delhi of 2002, pertaining to the assessment year 1998-99.

2. Briefly stated, the material facts, giving rise to the appeal, are as follows :

During the course of assessment proceedings for the aforenoted assessment year, the Assessing Officer noticed that in the assessed''s books of account a sum of Rs. 1 lakh was reflected as loan from one Mr. Vipin Kumar Alagh. The Assessing Officer required the assessed to furnish evidence to prove the genuineness of the said loan. Pursuant thereto, a copy of the bank account of the said Vipin Kumar, from where the cheque in favor of the assessed had been drawn, was filed. Upon recording the statement of the said creditor, the Assessing Officer came to the conclusion that the said Alagh had failed to explain the source of the cash amounts deposited by him in his account before issuing a cheque in favor of the assessed, and, Therefore, the loan remained unexplained. He, accordingly, added the said amount to the total income of the assessed as unexplained cash credit.

3. Aggrieved, the assessed preferred an appeal to the Commissioner of Income Tax (Appeals). The Commissioner examined the documentary evidence adduced by the assessed minutely. Apart from other deficiencies therein, he also noticed that the bill of the jewellers dated January 13, 1994, produced by the assessed, showing the sale of jewellery by the said Vipin Kumar did not contain even the name and address of the purchaser. Rejecting the evidence produced, the Commissioner of Income Tax (Appeals) sustained the addition.

4. Being aggrieved with the said order, the assessed carried the matter in further appeal to the Tribunal. By the impugned order the Tribunal has dismissed the appeal. Hence, the present appeal.

5. Assailing the order of the Tribunal as perverse, Mr. Manjani, learned counsel for the assessed, has submitted that since the assessed had proved the identity of the creditor by producing him before the Assessing Officer and had also filed his confirmatory certificate, showing the mode and manner in which the said amount had been received by the assessed, the onus on him to prove the genuineness and the creditworthiness of the creditor stood discharged and, Therefore, the authorities below were not justified in confirming the addition made by the Assessing Officer. Learned counsel submits that the order of the Tribunal involves a substantial question of law and, Therefore, the appeal deserves to be admitted.

6. We do not agree. The scope of an appeal under the newly inserted Section 260A of the Act is restricted to adjudication on a "substantial question of law" and not on a question of law, as it used to be u/s 256 of the Act. The expression "substantial question of law" is not defined in the Act. Though a similar expression appears in Section 100 of the Code of Civil Procedure, it is not defined in the said Act either. However, its connotation is well settled by judicial pronouncement. It was observed by the Supreme Court in Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., , that a question of law would be a substantial question of law if it directly or indirectly affects the rights of the parties and/or there is some doubt or difference of opinion on the issue. But if the question is settled by the apex court or the general principles to be applied in determining the question are well settled, mere application of it to a particular set of facts would not constitute a substantial question of law.

7. In the instant case, the said Vipin Kumar tried to explain the source of a sum of Rs. 74,000 as follows : (i) a sum of Rs. 19,000 from his wife out of her savings in cash as she was a working lady ; (ii) Rs. 30,000 out of refunds of small advances by his friends given in earlier years including refund of Rs. 9,000 given by him to some one up to March 31, 1955, and shown in the balance-sheet; and (iii) a sum of Rs. 25,000 out of cash in hand drawn from various savings bank accounts.

8. The Commissioner of Income Tax (Appeals) on re-appraisal of the entire

 

documentary evidence adduced by the said Vipin Kumar has come to the conclusion that even the documents showing the sale of jewellery were doubtful. The finding of the Tribunal being based on cogent material cannot be said to be perverse, as is sought to be pleaded by learned counsel for the petitioner.

9. Applying the aforenoted tests, in our opinion, no question of law, much less a substantial question of law, arises from the impugned order. We accordingly decline to entertain the appeal. Dismissed.