SUPREME COURT OF INDIA

Maharaja Amrinder Singh

Vs.

The Commissioner of Wealth Tax

C.A.No.1349 of 2007

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

05.09.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are filed against the final judgment and orders dated 24.08.2004 passed by the High Court of Punjab and Haryana at Chandigarh in Wealth Tax Appeal Nos. 10 & 11/2001 and 3,4 & 5/2002 respectively whereby the High Court allowed the appeals filed by the Revenue (Commissioner of Wealth Tax) under Section 27-A of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") and set aside the order dated 05.07.2011 passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), Chandigarh Bench in W.T.A. No. 11,12 & 13/Chandi/95 & C.O. No.37/Chandi/95 in W.T.A. No.11/Chandi/95 and order dated 13.06.2001 in W.T.A. Nos.213, 191 and 192/Chandi/94 and restored the order of assessment passed by the Assessing officer for levying penalty for the entire period of delay in respect of Assessment Years 1981-82, 1982-83 and 1983-84.

2. Few facts need mention for disposal of the appeals.

3. The appellant is the wealth tax assessee and is subjected to payment of Wealth Tax under the Act. The case pertains to the Assessment Years 1981-82, 1982-83 and 1983-84. The issue involved in these three assessment years was decided by the Tribunal in favour of the appellant (assessee) which gave rise to filing of the appeals before the High Court by the Revenue under Section 27-A of the Act questioning therein the legality and correctness of the orders of the Tribunal. As mentioned above, the High Court allowed the appeals filed by the Revenue, which has given rise to filing of these appeals by way of special leave before this Court by the assessee.

4. The short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the appeals filed by the Revenue and thereby was justified in setting aside the orders passed by the Tribunal.

5. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside of the impugned orders of the High Court remand the case to the High Court for deciding the appeals afresh on merits after formulating the substantial questions of law, if it so arises in the case.

6. Section 27 - A of the Wealth Tax Act reads as under

> "27-A Appeal to High Court. −
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> (1) The assessee or the Chief Commissioner or Commissioner may within one hundred twenty days of the day upon which he is served with notice of an order under section 24 or section 26 or clause (e) of sub-section (1) of section 35, file on or after the 1st day of October, 1998 but before the date of establishment of the National Tax Tribunal appeal before the High Court.
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> (1A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in sub-section (1), if it is satisfied that there was sufficient cause for not filing the same within that period.
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> (2) An appeal shall lie to the High Court before the date of establishment the National Tax Tribunal from every order passed in appeal by the Appellate Tribunal, under sub-section (1) of section 24 only if the High Court is satisfied that the case involves a substantial question of law.
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> (3) In an appeal under this section, the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal.
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> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
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> (5) The appeal shall be heard only on the question so formulated and the respondent shall, at the time of hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
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> (6) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
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> (7) The Assessing Officer shall give effect to the order of the High Court on the basis of a certified copy of judgment delivered under sub-section (6).

(8) The Provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to High Court shall, so far as may be, apply in the case of appeals under this section."

7. Section 27-A of the Act, which provides a remedy of appeal to the High Court against the order of the Income Tax Appellate Tribunal, is modeled on existing Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). Indeed, as would be clear, the language of Section 27-A of the Act and Section 100 of the Code is identical. Both the Sections are, therefore, in pari materia. It is a case where Section 100 of the Code is bodily lifted from the Code and incorporated in Section 27-A of the Act with minor additions and alterations by following the principle of "legislation by incorporation".

8. A three Judge Bench of this Court in *Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs*[1]., had examined the scope of Section 100 of the Code of the Civil procedure, 1908 (hereinafter referred to as "the Code"). Justice R.C. Lahoti (as His Lordship then was) speaking for the Bench laid down the following proposition of law in Para 9:

"9. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty case on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code. (See *Kshitish Chandra Purkait v. Santosh Kumar Purkait*[2] *Panchugopal Barua v. Umesh Chandra Goswami*[3]*, and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*[4]*,*"

9. His Lordship then in Paras 10 to 14 succinctly explained the meaning of the words "substantial question of law" and "question of law" and held that in order to admit the second appeal, what is required to be made out by the appellant being sine qua non for exercise of powers under Section 100 of the Code, is existence of "substantial question of law" arising in the case so as to empower the High Court to admit the appeal for final hearing by formulating such question. In the absence of any substantial question of law arising in appeal, the same merits dismissal in limine on the ground that the appeal does not involve any substantial question of law within the meaning of Section 100 of the Code.

10. In our considered opinion, the interpretation made by this Court of Section 100 in Santosh Hazari's Case (supra), would equally apply to Section 27-A of the Act because firstly, both Sections provide a remedy of appeal to the High Court; Secondly, both Sections are identically worded and in pari materia; Thirdly, Section 27-A is enacted by following the principle of "legislation by incorporation"; fourthly, Section 100 is bodily lifted from the Code and incorporated as Section 27-A in the Act; and lastly, since both Sections are akin to each other in all respects, the appeal filed under Section 27-A of the Act has to be decided like a second appeal under Section 100 of the Code.

11. Now coming to the facts of the case, we find that the High Court proceeded to decide the appeals without formulating the substantial question(s) of law. Indeed, the High Court did not make any effort to find out as to whether the appeals involved any substantial question(s) of law and, if so, which is/are that question(s) and nor it formulated such question(s), if in its opinion, really arose in the appeals. The High Court failed to see that it had jurisdiction to decide the appeals only on the question(s) so formulated and not beyond it. [Section 27(5)].

12. In the light of foregoing discussion and keeping in view the law laid down in the case of Santosh Hazari (supra), we are of the considered view that the impugned orders are not legally sustainable and thus liable to be set aside.

13. As a result, the appeals succeed and are allowed. Impugned orders are set aside. Both the cases are remanded to the High Court for deciding the appeals afresh in accordance with the observations made above.

Judgment Referred.

[1]*(2001) 3 SCC 0179*
[2]*(1997) 5 SCC 0438*
[3]*(1997) 4 SCC 0413*
[4]*(1999) 3 SCC 0722*