

RYATAR SAHAKARI SAKKARRE KARKHANE NIYAMIT A

v.

ASST. COMMISSIONER OF INCOME TAX C-1 & ORS.

(Civil Appeal Nos.4515-4524 of 2019)

MAY 01, 2019 B

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Income Tax Act, 1961 – s.260-A – Substantial question of law – The appeal is to be heard on merits, only on the questions framed by the High Court under sub-section (3) of s.260-A of the Act as provided under s.260A(4) of the Act – In the instant case, High court did not frame substantial question of law as required under s. 260-A(3) of the Act – Matter remanded to High Court for hearing afresh only after framing appropriate substantial question of law as required under s. 260A(3) of the Act – Appeal. C D

*PR. Commissioner of Income Tax Central-2 v.
M/s A.A. Estate Pvt. Ltd. 2019 (6) SCALE 509
– relied on.*

Case Law Reference E

2019 (6) SCALE 509 relied on Para 10

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.4515-4524 of 2019. F

From the Judgment and Order dated 26.02.2016 of the High Court of Karnataka, Dharwad Bench in ITA Nos. 100111-100120/2015

Ms. Anitha Shenai, Sr. Adv., Shankar Divate, Adv. for the Appellant.

K. Radhakrishnan, Sr. Adv., M. P. Gupta, T. M. Singh, Mrs. Anil Katiyar, Advs. for the Respondents. G

A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 26.02.2016 passed by the High Court of Karnataka, Circuit Bench at Dharwad in ITA Nos.100111-100120 of 2015 whereby the High Court dismissed the ITAs filed by the appellant(assessee) herein.

3. These appeals are filed by the assessee against the order passed by the High Court by which a bunch of appeals, some filed by the assessee and some filed by the Commissioner of Income Tax (Revenue) under Section 260-A of the Income Tax Act, 1961(hereinafter referred to as “the Act”) were disposed of.

4. So far as the appeals filed by the assessee were concerned, they were dismissed and so far as the appeals filed by the Commissioner of Income Tax were concerned, they were allowed. The assessee has felt aggrieved and has filed these appeals by way of special leave in this Court.

5. We do not consider it necessary to set out the facts of the case in detail in the light of the order that we are passing for the disposal of these appeals.

6. Heard Ms. Anitha Shenai, learned senior counsel for the appellant(assessee) and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow these appeals, set aside the impugned order and remand the case to the High Court with a request to decide the appeals afresh on merits in accordance with law.

8. The need to remand these appeals is called for because from the perusal of the order, we find that in Para 4, the High Court observed, “*Assessee has raised the following questions of law in its appeals*” and then set out four questions. Likewise, in Para 5, the High Court observed, “*Revenue has raised the following questions of law in its appeals*” and then set out three questions.

9. It is not in dispute that the High Court did not frame any question as required under Section 260-A (3) of the Act.

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10. This Court recently examined this question in Civil Appeal A
No.3968 of 2019 arising out of S.L.P.(c) No.29524 of 2017 (**PR.
Commissioner of Income Tax Central-2 vs. M/s A.A. Estate Pvt.
Ltd.**) decided on 16.04.2019. Paras 21 to 26 and 28 are apposite
which read as under:

“21. As is clear from reading of Para 2, the two questions B
set out in Para 2 were not the questions framed by the High
Court as was required to be framed under Section 260-A(3)
of the Act for hearing the appeal but were the questions
urged by the appellant.

22. In our view, there lies a distinction between the C
questions proposed by the appellant for admission of the
appeal and the questions framed by the Court.

23. The questions, which are proposed by the appellant,
fall under Section 260-A (2) (c) of the Act whereas the D
questions framed by the High Court fall under Section 260-
A (3) of the Act. The appeal is heard on merits only on the
questions framed by the High Court under sub-section (3)
of Section 260-A of the Act as provided under Section 260-
A (4) of the Act. In other words, the appeal is heard only
on the questions framed by the Court.

24. Third, if the High Court was of the view that the appeal E
did not involve any substantial question of law, it should
have recorded a categorical finding to that effect saying
that the questions proposed by the appellant either do not
arise in the case or/and are not substantial questions of law
so as to attract the rigor of Section 260-A of the Act for its F
admission and accordingly should have dismissed the
appeal *in limine*.

25. It was, however, not done and instead the High Court
without admitting the appeal and framing any question of G
law issued notice of appeal to the respondent-assessee,
heard both the parties on the questions urged by the
appellant and dismissed it. In our view, the respondent had
a right to argue “at the time of hearing” of the appeal that
the questions framed were not involved in the appeal and

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A **this the respondent could urge by taking recourse to sub-section (5) of Section 260-A of the Act. But this stage in this case did not arise because as mentioned above, the High Court neither admitted the appeal nor framed any question as required under sub-section (3) of Section 260-A of the Act. The expression “such question” referred to in sub-section (5) of Section 260-A of the Act means the questions which are framed by the High Court under sub-section (3) of Section 260-A at the time of admission of the appeal and not the one proposed in Section 260-A (2) (c) of the Act by the appellant.**

C **26. We are, therefore, of the view that the High Court did not decide the appeal in conformity with the mandatory procedure prescribed in Section 260-A of the Act.**

D **28. In the light of the foregoing discussion, we consider it just and proper to remand the case to the High Court for deciding the appeal afresh to answer the questions framed above on merits in accordance with law.”**

E 11. The facts of the case at hand and the one involved in **M/s A.A. Estate Pvt. Ltd.** quoted above are identical and, therefore, keeping in view the law laid down by this Court in **M/s A.A. Estate Pvt. Ltd.**(supra), these appeals have to be allowed and the case needs to be remanded to the High Court for hearing afresh on merits.

F 12. In view of the foregoing discussion, the appeals are allowed. The impugned order is set aside. The appeals are remanded to the High Court for hearing afresh only after framing appropriate substantial question(s) of law as required under Section 260-A(3) of the Act.

G 13. Having formed an opinion to remand the case to the High Court, we have not expressed any opinion on the merits of the issues involved in these appeals. The High Court will, therefore, decide the appeals strictly in accordance with law, uninfluenced by any observations made in the impugned order and in this order.