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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2691 OF 2018

1. The Principal Commissioner of Income Tax-1,
"Aayakar Bhavan", 31/C-2, E-Ward,
Tarabai Park, Kolhapur – 416 003. ...PETITIONERS

~ versus ~

1. Mahalaxmai Infra Projects Ltd.,
233/3, S-1 (B), Malati Towers,
Tarabai Park, Kolhapur – 416 001. ...RESPONDENTS

APPEARANCES

For the Petitioner	Mr Arjun Gupta, Advocate
For the Respondent	Mr Rohan Deshpande with Mr. Vihit Shah, Advocates

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ

RESERVED ON : 10TH SEPTEMBER 2026.
PRONOUNCED ON : 23RD SEPTEMBER 2026.

JUDGMENT (*Per Gautam Ankhad, J*):-

1. The matter is heard finally at the stage of admission, with the consent of parties.

2. The Department has filed this Appeal under Section 260-A of the Income Tax Act, 1961 (**"the Act"**) challenging the impugned order dated 17th January, 2018 passed by the Income Tax Appellate Tribunal Bench, "A" Pune. The Appeal pertains to the Assessment Year 2011-12.

3. The facts of the case, in a nut shell, is that the Respondent-Assessee is engaged in the business of construction of roads and other infrastructure works. In its return of income for the year under consideration, the Respondent claimed deduction under Section 80-IA(4) of the Act in respect of the infrastructure works undertaken by it.The Assessing Officer (AO) passed an assessment order under Section 143(3) of the Act, disallowing the deduction, principally on the ground that the Assessee was merely a contractor and could not be regarded as a developer of an "infrastructure facility" within the meaning of Section 80-IA(4) of the Act. According to the Assessing Officer, the Assessee did not satisfy the statutory requirement of developing, operating and maintaining an infrastructure facility. The Commissioner of Income Tax (Appeals), Kolhapur [**"CIT(A)"**] in its order dated 30th April, 2014, considered the material on record but did not accept the aforesaid conclusion of the Assessing Officer, thereby allowing the claim of the Assessee. The Tribunal has affirmed the findings of the CIT(A) and dismissed the Department's Appeal. The Department is before this Court by filing this appeal, contending that substantial questions of law are involved in the appeal warranting interference under Section 260-A of the Act.

4. On 23rd July, 2026, the substantial questions of law, projected by the Appellant, read as follows:-

> "(A). Whether the Assessee is entitled to the deduction under Section 80-IA(1) of the Act on the basis that it is into the business of developing, operating and maintaining infrastructure facilities?
>
> (B). Whether the reliance placed by the ITAT upon its own order dated 9th December, 2015 is arbitrary and perverse since the facts of that case differ from the present case?"

5. We have heard the learned counsel for the parties and have perused the record. In our view, the questions formulated by the Appellant do not give rise to a substantial question of law warranting exercise of jurisdiction under Section 260-A of the Act. The expression "substantial question of law", though not defined in the Act, has received a settled meaning through a long line of decisions of the Hon'ble Supreme Court. In ***Vijay Kumar Talwar v.***

CIT[1], the Hon'ble Supreme Court, while referring to the Constitution Bench judgment in ***Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.***, has laid down the test to be applied in determining whether a question of law is substantial or not. The relevant portion reads thus:-

> "20. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.[2], a Constitution Bench of this Court, while explaining the import of the said expression, observed that:
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> > "6. … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."
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> 21. Similarly, in Santosh Hazari v. Purushottam Tiwari[3], a three-Judge Bench of this Court observed that:
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> > "14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the

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1 *(2011) 1 SCC 673*

2 *AIR 1962 SC 1314*

3 *(2001) 3 SCC 179*

question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide thaWe have heard the learned counsel for the parties and have perused the record. In our view, the questions formulated by the Appellant do not give rise to a substantial question of law warranting exercise of jurisdiction under Section 260-A of the Act. The expression “substantial question of law”, though not defined in the Act, has received a settled meaning through a long line of decisions of the Hon’ble Supreme Court. In **Vijay Kumar Talwar v. CIT**[4], the Hon’ble Supreme Court, while referring to the Constitution Bench judgment in **Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.**, has laid down the test to be applied in determining whether a question of law is substantial or not. The relevant portion reads thus:-

“20. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.[5], a Constitution Bench of this Court, while explaining the import of the said expression, observed that:

“6. … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

21. Similarly, in Santosh Hazari v. Purushottam Tiwari[6], a three-Judge Bench of this Court observed that:

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4 *(2011) 1 SCC 673*

5 *AIR 1962 SC 1314*

6 *(2001) 3 SCC 179*

> "14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

22. In Hero Vinoth v. Seshammal[7], this Court has observed that:

> "(iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

6. Tested on the aforesaid principles, the present Appeal, in our considered opinion, does not satisfy the threshold contemplated by

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7 *(2006) 5 SCC 545*

Section 260-A for being admitted by this Court. The first question essentially seeks reconsideration of the factual conclusion as to whether the Assessee's activities qualify it as a developer of an infrastructure facility for the purposes of Section 80-IA(4). That issue has already been examined by the CIT(A) and the Tribunal on the basis of the material before them, and both authorities have concurrently held in favour of the Assessee. The Department has not demonstrated that these findings are perverse or that the authorities below have applied an erroneous legal test.

7. As regards the second question projected by the Appellant, here also, we find that the learned Tribunal has relied upon its own earlier order dated 9th December, 2015, which has been confirmed by this Court. This is specifically recorded in paragraph 13 of the impugned order. We are unable to accept the submission of the Appellant that simply because the learned Tribunal has relied upon its earlier order, the impugned judgement suffers from any infirmity to such an extent so as to give rise to a substantial question of law meriting admission of the Appeal.

8. It is to be borne in mind that Section 260-A does not confer a general appellate jurisdiction upon the High Court to reappreciate evidence or substitute its own view for the view concurrently taken by the authorities below on questions of fact. An Appela under Section 260A of the Act can be admitted only when the High Court is convinced that the same involves “substantial question(s) of law” begging an answer of the Court and not otherwise. However, upon going through the record and on considering the submissions of the learned departmental counsel we are convinced the is/ are no substantial question(s) of law involved in the Appeal which calls for an answer by this Court.

9. There is an additional circumstance which fortifies our conclusion. Mr. Deshpande, the learned counsel appearing for the Respondent, has placed before us a copy of the order dated 24th April, 2026 passed by a Co-ordinate Bench of this Court in Income Tax Appeal no. 2997 of 2018 ***(Principal Commissioner of Income Tax-1 v. Mahalaxmi Infra Projects Limited)***. The said Appeal concerned the same Assessee and the same subject matter, *albeit* for a different assessment year. The Co-ordinate Bench has considered the identical findings contained in paragraphs 13 to 16 of the impugned order and dismissed the Department's Appeal, holding that no substantial question of law arose for consideration.

In these circumstances, the present Appeal cannot be a third round of factual scrutiny. The Appeal is, accordingly, dismissed.

10. Before parting with the record, we are constrained to observe here that this Bench has noticed that Appeals under Section 260A of the Act are filed by the Department in a routine manner whereby the suggested substantial questions of law(s) are drafted mechanically. In most of those appeals, legal objection and/or purported grounds of challenge to the orders of the Tribunal have been projected as substantial questions of law, based on which, a large number of Income Tax Appeals have been filed under Section 260A of the Act which are pending before this Court. Having regard to the legislative scheme of Section 260A, the remedy thereunder, cannot be permitted to become a routine or automatic continuation of the proceeding instituted before the learned Tribunal.

11. The pendency of large number of Appeals filed under Section 260A, where no substantial question of law is involved, is, on one hand, increasing back log of cases and on the other hand, coming in the way of expeditious disposal of Appeals involving the interest of the Revenue where serious questions of law are awaiting consideration of the Court. We, therefore, expect the Departmental Authorities to look into these aspects of the matter and take corrective step(s),as may be deemed necessary.

12. A copy of this order be sent to the Principal Chief Commissioner of IT Department.

(GAUTAM A. ANKHAD, J.) **(SUMAN SHYAM, J.)**