

## Substantial Question of Law

### Introduction

Under Income tax Act, whenever an assessee is aggrieved by the order of assessing authority he had the option to file an appeal against the order before a higher authority of Income tax department. The first appeal against the order of Assessing Officer can be filed before the Commissioner (Appeals) and it can be filed by assessee only. Further appeal against order of CIT(A) can be preferred before the Income Tax Appellate Tribunal. Also, in case any person is aggrieved by the order of Appellate Tribunal, appeal can be filed before the High Court and even to the Supreme Court in case the matter involves substantial question of law.

An appeal to the High Court in any case is not a matter of right. The right of appeal is conferred by statute. An appeal to the High Court only lies on a substantial question of law. Section 260A of the Income tax Act empowers that any person can file an appeal to the High Court regarding an order of the Appellate Tribunal in case the order involves substantial question of law. The clause (1) of section 260A states that “An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law”.

Also, Clause 3 of section 260A stated as follows “Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question”. Appeal can be filed before High court by the aggrieved party against the order of the subordinate court. Also amended Section 100 of the CPC restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a “substantial question of law” is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC. Section 100 of Code of civil procedure states as follows “Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law”

Thus, it is manifest from the reading of the Section 260A of Income tax Act 1961 that an appeal can be made to the High Court regarding a decision of the Tribunal only when a substantial question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises in that respective case, and it is mandatory that such question(s) must be formulated and enlighten by the court. However if the High Court has adopt a view that the appeal did not involve any substantial question of law, it should record 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 admission and accordingly should dismissed the appeal.

### Background behind insertion of section 260A

Section 260A of the Income Tax Act was inserted with effect from October 01, 1998 and.....

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