IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Sudip Deb

ITA No. 124 of 2019

Principal Commissioner of Income Tax, Kolkata 2, Kolkata
-Vs-
Birla Corporation Limited

OCO No. 19 of 2020
Principal Commissioner of Income Tax, Kolkata-2, Kolkata
-Vs-
Birla Corporation Ltd.

For the Appellant (In ITA No. 124/2019)	: Mr. Prithu Dudhoria Mr. Amit Sharma
For the Income Tax Authority	: Mr. Prithu Dudhoria Mr. Anurag Roy
For the Birla Corporation	: Mr. J.P. Khaitan, Sr. Adv. Mr. Sanjoy Bhaumik Ms. Swapna Das
Heard on	: 13.10.2026
Judgment on	: 14.10.2026

Sudip Deb, J.:-

1. The point that arises for consideration in the instant appeal is whether Section 260A of the Income Tax Act, 1961 which is hereinafter referred to as "the said Act", permits the respondent to file cross-objection and whether the same is sustainable in law or not.

2. The facts which are necessary for deciding this issue are narrated hereinafter.

3. By an order dated 11th March, 2020 the Division Bench of this Court formulated the following substantial questions of law:

> *"1. Whether on the facts and in the circumstances of the case, the tribunal interpreted and applied Section 80IA[8] of the Income Tax Act, 1961 in relation to the sale of electricity by the assessee to Indian Energy Exchange and Rajasthan Power Procurement Centre?*
>
> *2. Whether the assessing officer had rightly invoked Rule 8D(2) [iii] of Income Tax Rule 1962?*
>
> *3. Whether the assessee was further entitled to get 50% additional depreciation of an amount of Rs.13,83,17,412/- when the assessee had already deducted 50% in the assessment year 2009-2010?*
>
> *4. Whether the interest subsidy received by the assessee amounting to Rs.11,1,42,419/-was revenue receipt?"*

4. It further appears that by a subsequent order dated 14th May, 2026 after hearing the respective parties represented through their counsel, this Court has reframed the substantial question of law no. 2 as formulated on 11th March, 2020 which is as under:

> *"Whether the Learned ITAT substantially erred in law in not appreciating the true scope of Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 in directing the Assessing Officer to not consider the investments made by the Assessee in subsidiary companies for computing disallowance under the said provisions?"*

5. It also appears by an order dated 15th May, 2026 this Court after hearing the parties has recorded the objection regarding maintainability of the cross-

objection in respect of the instant appeal at the instance of the appellant. While doing so, by the said order this Court has permitted the parties to exchange their affidavits. Pursuant thereto, the affidavits have been exchanged and we have taken it on record. What we find from the record and particularly from the memorandum of cross-objection filed on behalf of the respondent that the substantial questions of law (a), (b) and (c) as framed by the respondent are somewhat interlinked and can be decided with the reframed substantial question of law no.2.

6. The substantial questions of law as framed by the respondent in its cross-objection have not been admitted. But this Court felt that since the substantial questions of law being (a), (b) and (c) as framed by the respondent are somewhat interlinked with the substantial question of law no. (2) as reframed by this Court, the issue of maintainability relating to the right of cross-objection has to be decided first before going into the other aspect of the matter.

7. It is argued on behalf of the appellant that filing of cross-objection is not permissible under Section 260A of the said Act. According to the Learned Counsel for the appellant though Section 260A(7) contemplates that *"Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."* but since there is no provision for filing cross-objection specifically provided in this Section, the respondent is debarred from filing a cross-objection. According to him,

unless such right is specifically spelt out in the provision merely because the provisions of the Code of Civil Procedure, 1908 (5 of 1908) applies, it does not confer any right of filing cross-objection. Thus, it is argued that the only remedy available to the respondent is to prefer an appeal challenging the order of the Appellate Tribunal.

8. The Learned Counsel also argued that the right to prefer an appeal before the High Court against a decision of the Income Tax Tribunal is nothing but a third appeal in sequence of remedy and such right is governed by the provisions of Section 260A of the said Act. It is further argued that the right to prefer an appeal is not inherent and is circumscribed by the statutory provisions. It is also argued that the right to prefer a cross-objection has been specifically spelt out in Sub-Section (4) and (5) of Section 253 of the said Act. Therefore, principles of Order XLI Rule 22 as contemplated in the Code of Civil Procedure, 1908 (5 of 1908) will apply relating to an appeal preferred before the Appellate Tribunal and not before this Court under Section 260A of the said Act.

9. By acknowledging the right to raise cross-objection challenging the finding of the Commissioner in an appeal before the Appellate Tribunal, the principles of Order XLI Rule 22 as contemplated in the Code of Civil Procedure, 1908 (5 of 1908) would apply only before the Tribunal and not under an appeal filed in High Court under Section 260A of the said Act.

10. It is further argued that the legislature has specifically refrained from incorporating right of cross-objection in an appeal filed under Section 260A

of the said Act and the same has been done because the scope of appeals preferred under Sections 253 and 260A of the said Act are different. It is also argued that since the Income Tax Act is a self-contained code, the general law is not applicable to the matters pertaining to the said Act.

11. In support of such contentions, the Learned Counsel for the appellant has relied upon two decisions, namely, ***Smt. Jyoti Kumari vs. Assistant Commissioner of Income-Tax [2012] 344 ITR 60 (Karn), Principal Commissioner of Income-Tax vs. Nagar Dairy Pvt. Ltd. [2025] 480 ITR 354 (Delhi)***.

12. The Learned Senior Counsel for the respondent argued that on a conjoint reading of Section 100, Order XLI and Order XLII of the Code of Civil Procedure, 1908 (5 of 1908), it is absolutely clear that the provisions of Order XLI Rule 22 and Order XLII contemplate the right of the respondent to file cross-objection in an appeal filed under Section 260A of the said Act.

13. It is argued that Sub-Section (7) of Section 260A makes the position absolutely clear. If Section 260A of the said Act is read with Sections 100, 103, Order XLI, Order XLII of the Code of Civil Procedure, 1908 (5 of 1908) then an analogy should be drawn that right to file cross-objection in an appeal under Section 260A of the said Act is permissible.

14. It is also argued that it would be evident from a careful reading of Section 260A of the said Act, that right to prefer a cross-objection is maintainable before the High Court in an appeal under Section 260A of the said Act as such appeal to High Court under the said Act is nothing but second appeal.

15. It is also argued that right to prefer an appeal before the Commissioner as contemplated under Section 246A of the said Act is nothing but a continuation of a proceeding which was initiated by the Assessing Officer and in strict sense, it cannot be said to be an appeal. It is also argued that power of Commissioner in appeal is only restricted to cure the material irregularity and nothing beyond that. Therefore, in true sense the first appeal is the appeal filed before the Appellate Tribunal and the second appeal under the said Act is the appeal which has been preferred before the High Court under Section 260A of the said Act.

16. According to the Learned Senior Counsel the words "right to cross-objection" need not be spelt out in the provision, namely, Section 260A of the said Act. It is argued that the Court should presume from a conjoint reading of Sections 100, 103, Order XLI, Order XLII of the Code of Civil Procedure, 1908 (5 of 1908) to be read with Section 260A of the said Act that the right of cross-objection is maintainable under Section 260A of the said Act.

17. It is also argued even in second appeal cross-objections are held to be maintainable.

18. In support of such contention, the Learned Senior Counsel has relied upon three decisions, namely, ***Bansari and Others vs. Ram Phal (2003) 9 Supreme Court Cases 606, Hari Shankar Rastogi vs. Sham Manohar and Others (2005) 3 Supreme Court Cases 761, Principal Commissioner of Income-tax-2 vs. Industrial Safety Products (P.) Ltd. [2023] 154 taxmann.com 433 (Calcutta)***.

19. It is argued that the provision of Order XLI Rule 5 is applicable to appeals under Section 260A of the said Act. It is further argued that the language of Section 260A of the said Act is similar to the language used in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908). Thus, the right to file cross-objection is maintainable under Section 260A of the said Act. In support of this, the Learned Senior Counsel has relied upon a decision, namely, ***S.B.I. Home Finance Ltd. vs. Commissioner of Income-Tax [2001] 249 ITR 438 (Cal)***. It is further argued relying on a decision reported in ***Bikram Singh vs. Principal Commissioner of Income-Tax [2023] 458 ITR 684 (SC)*** the appeal under Section 260A of the said Act is akin to second appeal and as such, it is argued the cross-objection is maintainable.

20. It is also argued that cross-objection under Section 35G of the Central Excise Act, 1944 held to be maintainable applying the provisions of the Order XLI, Rule 22 and the said provision of the Central Excise Act, 1944, is *pari materia* with Section 260A of the said Act. Thus, cross-objection is also maintainable under Section 260A of the said Act applying the same analogy. In support of such contention the Learned Senior Counsel referred to a decision reported in ***C.C.E., C. & S.T., Raipur vs. Chhattisgarh State Industrial Development Corpn. Ltd. 2018 (17) G.S.T.L. 593 (Chhattisgarh)***.

21. The Learned Senior Counsel has further relied upon a decision in the matter of ***Cipla Ltd. vs. Assistant Commissioner of Income-Tax and Another [2016] 387 ITR 52 (Bom)*** in support of the contention that in the said case

cross-objection filed by the respondent is dismissed by virtue of the fact that there was no appeal on board. It is argued that from the discussions made in the said judgment it is evident that the Court had categorically accepted that cross-objection is maintainable in an appeal under Section 260A of the said Act. It is further argued that the form of cross-objection is merely procedure in nature. To buttress this, reliance has been placed on a decision reported in ***Municipal Corporation of Delhi & Ors. vs. International Security & Intelligence Agency Ltd. (2004) 3 SCC 250.***

22. We have heard the parties at length.

23. In order to decide the issue of maintainability of cross-objection to the extent whether the same is permissible or not under Section 260A of the said Act, we need to discuss the scope of Section 100, Section 103, Order XLI Rule 22 and Order 42 of the Code of Civil Procedure, 1908 (5 of 1908) relating to its applicability in an appeal under Section 260A of the said Act, which are quoted hereinbelow:-

> *"**[100. Second appeal.—**(1) 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.*
>
> *(2) An appeal may lie under this section from an appellate decree passed ex parte.*
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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.*
>
> *(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the 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].

...

[103. Power of High Court to determine issue of fact.—*In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—*

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.]

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Order XLI

Appeals From Original Decrees

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22. Upon hearing, respondent may object to decree as if he had preferred separate appeal. - *(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.*

[Explanation. - A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) ***Form of objection and provisions applicable thereto****-Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.*

[***]

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

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Order XLII

Appeals From Appellate Decrees

1. ***Procedure.*** *- The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.*
2. ***Power of Court to direct that the appeal be heard on the question formulated by it.*** *– At the time of making an order rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.*

3. Application of rule 14 of Order XLI. *– Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order."*

24. Section 260A of the Income Tax Act is also quoted hereinbelow:-

*"**Appeal to High Court.***

260A. *(1) 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.*

(2) [The [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or] Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-]

(a) filed within one hundred and twenty days from the date on which the order appealed against is [received by the assessee or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner];

(b) [***]

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) This High Court may admit an appeal after the expiry of the period of or of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the 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.

(5) 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.

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]"

25. From a conjoint reading of the aforesaid provisions it appears that Order XLI Rule 22 only discusses the right of the respondent to object the decree as if the respondent had preferred separate appeal. It is only under these circumstances, if the respondent has not preferred an appeal from any part of the decree may not only support the decree but also may take any cross-objection to the decree which he could have taken by way of an appeal.

26. Order XLII though does say that in case of an appeal from appellate decree the Rules of Order XLI will apply but that has been qualified in Order XLII Rule 2 to the extent that at the time of making an order under Rule 11 of the

Order XLI for hearing of a second appeal, the Court shall formulate the substantial questions of law as required by Section 100, and in doing so, the Court may direct that the second appeal be heard on the questions so formulated and it shall not be open to the appellant to urge any other ground in appeal without the leave of the Court, given in accordance with the provision of Section 100. Therefore, what the legislature intended that in second appeal it is only the appellant has the right to urge any other ground, other than the grounds formulated in second appeal with the leave of the Court.

27. Though the respondent's right to prefer cross-objection has not been clearly spelt out in relation to a second appeal but by applying the analogy what is contemplated in Order XLI Rule 22 it can be said that even the cross-objections are also maintainable in case of a second appeal. This analogy also finds support in the case of ***Hari Shankar Rastogi vs. Sham Manohar & Ors. (supra)*** as cited by the respondent.

28. Undoubtedly, Section 100 talks about the substantive right of a party of preferring second appeal. Section 103 of the Code of Civil Procedure, 1908 (5 of 1908) talks about the power of High Court in second appeal to determine any issue necessary for disposal of the appeal which has not been determined by the lower appellate Court or both by the Court of first instance and the lower appellate Court or which has been wrongly determined by such Court or Courts by reason of a decision on such

question of law as is referred to in Section 100. This is, of course, subject to the sufficiency of the evidence on the record.

29. Therefore, from a conjoint reading of Sections 100 and 103 of the Code of Civil Procedure, 1908 (5 of 1908) what it appears that the Court can formulate the substantial questions of law and the respondent at the time of hearing is permitted to argue the case does not involve such question and while doing so the Court may take the evidence on record if the same is sufficient to determine the issue raised in second appeal which has not been determined both by the Court of first instance and the lower appellate Court or has been wrongly determined by such Court.

30. While interpreting Order XLI Rule 22 the Supreme Court in ***Hari Shankar Rastogi's*** case *(supra)* has held Order XLI Rule 22 is applicable to second appeal relating to the right of cross-objection.

31. It is equally important to consider that in the matter of ***Bikram Singh vs. Principal Commissioner of Income-Tax (supra)***, the Supreme Court has held that the appeal filed under Section 260A of the said Act is akin to a second appeal and Section 100 read with Order XLII Rule 1 of the Code of Civil Procedure, 1908 (5 of 1908) would apply. The other judgments cited by the respondent do not have any direct bearing with the present case.

32. Section 260A(7) provides that save as otherwise provided in the Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under Section 260A.

33. Order XLI Rule 22 of the Code of Civil Procedure, 1908 (5 of 1908) permits the respondent not only to support the decree which is under challenge but also to file a cross-objection in respect of that part of the decree which the respondent seeks to challenge. The language of Order XLII Rule 1 is such that it makes the Rules of Order XLI applicable, so far as may be to second appeals also.

34. The expression "so far as may be" as contemplated under Section 260A(7) of the said Act does not exclude Order XLI Rule 22 merely because Section 260A does not specifically mention the right of cross-objection in express terms. The provision under Section 260A(7) is nothing but a statutory mechanism applying which the procedural provisions governing the appeals to the High Court are incorporated subject to their compatibility with the special scheme of Section 260A. We do not find any inconsistency between the Order XLI Rule 22 of the Code of Civil Procedure, 1908 (5 of 1908) and Section 260A of the said Act.

35. The requirement that there must be existence of substantial question of law in an appeal under Section 260A of the said Act continues to apply. A cross-objection under Section 260A cannot enlarge the jurisdiction of the Court to decide the questions of fact or matters which do not arise from order of the Tribunal. The cross-objection must be confined to the part of the order which is adverse to the respondent and that must indicate that it involves a substantial question of law as contemplated under Section 260A of the said Act.

36. We are of the view that the insertion of the words in Section 260A(7) of the said Act *"… the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."* necessarily includes the right of filing cross-objection. Such right need not be spelt out specifically.

37. Section 253 of the said Act is a specific provision governing appeals before the Tribunal and expressly regulates the time and the manner of filing of a cross-objection there. Section 260A talks about the applicability of Code of Civil Procedure, 1908 (5 of 1908) in the case of an appeal filed in High Court. The absence of a separate, self-contained provision relating to the filing of cross-objection in Section 260A of the said Act is, therefore, not sufficient to exclude the procedural right as contemplated under Order XLI Rule 22 of the Code of Civil Procedure, 1908 (5 of 1908).

38. The Supreme Court in the case of ***Municipal Corporation of Delhi & Ors. vs. International Security & Intelligence Agency Ltd. (supra)*** has observed that the form of cross-objection is a matter of procedure whereas the substantive right is the right of appeal.

39. There is no doubt that the Income Tax Act is a self-contained and exhaustive code. It is equally important to note that on a cursory reading of Section 260A(7), the said Section does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure, 1908 (5 of 1908). Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure, 1908 (5 of 1908) would

apply to appeals under Section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure, 1908 (5 of 1908) are necessarily excluded or High Court's inherent jurisdiction is in any manner affected as held in the case of ***CIT vs. Meghalaya Steels Ltd.*** reported in ***[2015] 377 ITR 112 (SC)***.

40. For the above reasons we are not in agreement with the ratio laid down in the case of ***Smt. Jyoti Kumari vs. Assistant Commissioner of Income-Tax (supra)*** as also in the case of ***Principal Commissioner of Income Tax vs. Nagar Dairy Pvt. Ltd. (supra)*** cited by the appellant.

41. In view of the above, we are of the considered view that the right to file cross-objection in an appeal filed under Section 260A of the said Act is maintainable. This is of course, subject to satisfying the Court that the questions framed by the respondent are substantial questions of law remain within the scope of Section 260A of the said Act.

42. List the appeal for hearing on 30th November, 2026 for formulating the substantial questions of law as framed by the respondent in the appeal.

43. There shall be no order as to costs.

44. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the all necessary formalities.

I Agree.

(Rajarshi Bharadwaj, J.) **(Sudip Deb, J.)**