आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER

ITA No.991/Ahd/2016
AND
ITA No.2574/Ahd/2017
निर्धारण वर्ष/ Asstt. Year: 2011-12

Shri Jitendra Narsinhbhai Talpada53, Atmajyotinagar Society Nr. Tejas Vidyalaya, Ellora Park Vadodara 390 023. PAN : AAGPT 2465 A	Vs.	ITO, Ward-6(1) Vadodara.

(Applicant)		(Responent)

Assessee by :	Ms.Urvashi Shodhan, AR
Revenue by :	Shri Deelipkumar, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 07/01/2020**
घोषणा की तारीख /**Date of Pronouncement: 09/01/2020**

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the assessees against orders of ld.CIT(A)-4, Baroda dated 15.12.2015 and 10.8.2017. Vide order dated 15.12.2015, the ld.CIT(A) has dismissed appeal of the assessee against assessment order passed under section 143(3) of the Act and confirmed the addition. Vide order dated 10.8.2017, the ld.CIT(A) has confirmed the penalty order dated 15.2.2017 vide which the ld.AO has imposed penalty of Rs.4,99,980/- upon the assessee.

2. The ld.counsel for the assessee at the very outset submitted that though the assessee has taken seven grounds of appeal, but her preliminary grievance is that order of ld.CIT(A) is non-speaking and did not adjudicate points raised by the assessee.

3. Brief facts of the case are that the assessee has filed his return of income on 30.7.2011 declaring total income at Rs.4,55,010/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee is a doctor in Jamnabhai Hospital, Vadodara. He has constructed a hospital namely "Shiv Sagar Hospital", and put medical instrument, furniture and fixtures in the hospital. This hospital was given on rent and rental income at Rs.1,08,000/- was shown as income from other sources. The assessee has claimed depreciation of Rs.4,31,466/- from this hospital, and thus, net rental income has been computed in negative i.e. Rs.(-)3,23,466/-. This income has been set off against the salary income, and gross total income at Rs.5,63,251/- was shown by the assessee.

4. Two issues arose in the assessment proceedings viz. whether the income from the hospital income is to be assessed as income from other sources or as house property income. The second issue arose, whether the loss under the head "income from other sources" can be set off against the salary income. The ld.AO after hearing the assessee rejected both these claims of the assessee. He estimated house property income at Rs.20,35,116/- after giving deduction under section 24(a) of the Act at Rs.6,10,535/-, he made addition of Rs.14,24,581/-. In this way, total income of the assessee has been determined at Rs.22,03,058/-. Dissatisfied with this treatment, the assessee carried the matter in appeal. The ld.CIT(A) has dismissed the appeal of the assessee.

5. With the assistance of the ld.representatives, we have gone through the record carefully. A perusal of the impugned order would suggest that it is running into 13 pages. The ld.CIT(A) has reproduced the assessment order from pages 2 to 11. He thereafter reproduced submissions of the assessee on pages 11 and 12. The discussion made by the ld.CIT(A) is available only in paragraph 3.3 on page no.3, which reads as under:

> *"3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. From the order of the assessment, it transpires that the submissions of the assessee made above were also made before the Assessing Officer and Assessing Officer has analyzed the same in minute details and controverted the explanations of the assessee referring to the provisions of sections involved. I concur with the Assessing Officer that the rent shown by the assessee has absolutely no justification considering factors like investment in the building, its location and successful operation of a hospital from that building. Considering the detailed factual findings of the Assessing Officer and the tax profile of the couple, I consider it appropriate to upheld the order of the Assessing Officer and the grounds of appeal are dismissed.'*

6. Sub-section (6) of section 250 of the Income Tax Act, 1961 mandates the ld.CIT(A) to state point in dispute, and thereafter record reasons in support of his conclusion. A perusal of the above finding would indicate that it is not in consonance with mandate given in the Act. The ld.CIT(A)has not made any analysis of submissions filed by the assessee as well as point raised by him during the assessment proceedings. Therefore, the impugned order is not sustainable; it deserves to b e set aside. However, before setting aside the impugned order, and remitting the issue to the file of the ld.CIT(A), we would like to appraise ourselves with observation of the Hon'ble Punjab and Haryana High Court in the case of Roadmaster Inds. Of India P.Ltd. Vs. IAC of IT, 303 ITR 138. Hon'ble Court has made reference to large number of decisions rendered by the Hon'ble Supreme Court as well as by other High

Courts while laying down on the importance of reasoning required to be given in any order. Such observation reads as under:

> *"4. On a perusal of impugned order, even the counsel for the revenue could not dispute that the order passed by the CIT cannot be termed to be a speaking order which could stand in judicial scrutiny. As to whether in exercise of quasi-judicial powers, the authorities are required to pass orders by giving reasons in support thereof is well-settled by a series of judgments by the Hon'ble Supreme Court of India.*
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> *5. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala AIR 1961 SC 1669, while dealing with an order passed by the Central Government in exercise of its appellate powers under section 111(3) of the Companies Act, 1956, in the matter of refusal of a company to register the transfer of shares, Hon'ble the Supreme Court observed :*
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> > *". . . If the Central Government acts as a Tribunal exercising [quasi] judicial powers and the exercise of that power is subject to the jurisdic- tion of this Court under article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order. . . ." (p. 1678)*
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> *6. Another Constitution Bench of Hon'ble the Supreme Court in Bhagat Raja v. Union of India AIR 1967 SC 1606 considered the question whether while exercising revisional power under section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Rules 54 and 55 of the Mineral Concession Rules, 1960, the Central Government was required to give reasons in support of its decision and held :*
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> > *". . . The decisions of Tribunals in India are subject to the supervisory powers of the High Courts under article 227 of the Constitution and of appellate powers of this Court under article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word 'rejected' or 'dismissed'. In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. . . ." (p. 1610)*

7. In Travancore Rayons Ltd. v. Union of India AIR 1971 SC 862, Hon'ble the Supreme Court observed :

> *". . .The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power." (p. 866)*

8. In Mahabir Prasad Santosh Kumar v. State of UP AIR 1970 SC 1302, Hon'ble the Supreme Court while quashing the cancellation of the petitioner's licence by the District Magistrate, observed :

> *". . . Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just." (p. 1304)*

9. In Woolcombers of India Ltd. v. Woolcombers Workers' Union AIR 1973 SC 2758, Hon'ble the Supreme Court quashed the award passed by the Industrial Tribunal on the ground that it was not supported by reasons and observed :

> *". . .The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not*

appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this Court by special leave granted under article 136. A judgment which does not disclose the reasons will be of little assistance to the Court. . . ." (p. 2761)

10. The same view was reiterated in Ajantha Industries v. CBDT AIR 1976 SC 437 and Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India AIR 1976 SC 1785.

11. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, a Constitution Bench reviewed various judicial precedents on the subject and observed:

"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Court to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and Tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations,

referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decisions are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge." [Emphasis supplied] (p. 1995)

12. In Testeels Ltd. v. N.M. Desai, Conciliation Officer AIR 1970 Guj. 1, a Full Bench of Gujarat High Court speaking through P.N. Bhagwati, J. (as his Lordship then was) made a lucid enunciation of law on the subject in the following words:—

"The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or

irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under article 226 and the Supreme Court under article 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said Courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction." (p. 1)

13. Keeping in view the above settled principles of law and applying the same in the facts and circumstances of the present case, we are of the view that the order passed by the CIT does not satisfy the pre-requisites of a speaking order, as the same does not contain reasons to support the order."

7. In the light of the above, if we examine order of the ld.CIT(A) extracted (supra), then it would reveal that this order is not in coherence with the requirement contemplated in section 250(6) of the Act, and therefore, we set aside this order, and remit the issues to the file of the ld.CIT(A) for adjudication on merit.

8. As far as penalty appeal is concerned, sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than , but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words,

the quantification of the penalty is depended upon the additions made to the income of the assessee. Upto and until, the issue regarding determination of the taxable income is finalized, penalty under section 271(1)(c) of the Act cannot be imposed upon the assessee. Once we have set aside the quantum proceedings, then very basis to compute penalty gets extinguished. Therefore, we set aside the penalty order passed by the AO as well as by the ld.CIT(A). This issue is also required to be adjudicated on the basis of outcome of quantum proceedings. The ld.CIT(A) shall adjudicate the issue with regard to levy of penalty after adjudication of quantum appeal. In view of the above, both appeals of the assessee are allowed for statistical purpose.

9. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the Court on 9th January, 2020 at Ahmedabad.

Sd/-	Sd/-
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 09/01/2020