

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.173 of 2014
Date of decision: 7.12.2015**

The Commissioner of Income Tax II, Amritsar

.....Appellant

M/s Banarsi Sweets (P) Limited, Main Bazar, Pathankot

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Denesh Goyal, Advocate for the appellant-revenue.

Mr. Salil Kapoor, Advocate with Mr. Saurabh Kapoor,
Mr. Sanat Kapoor and Mr. Sumit Lalchandani, Advocate
for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 21.11.2013, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.471(ASR)/2011 for the assessment year 2007-08, claiming following substantial questions of law:-

- “1. Whether the Hon'ble ITAT Bench, Amritsar was right in law in deleting the addition made by the AO on account of surrender originally made during the survey proceedings to cover discrepancies found in cash in hand, stock and unexplained expenditure on construction of building?
2. Whether the Hon'ble ITAT Bench, Amritsar was right in facts

and circumstances and in law in ignoring the fact that the so called retraction letter of the assessee restricting the surrender to ₹ 8 lac was also an admission on the part of the assessee that there were indeed certain discrepancies for which the assessee had to make a surrender?

3. Whether the ITAT Amritsar was right in law in ignoring the fact that during the survey proceedings specific discrepancies were found which included surplus cash of ₹ 13,60,453/- and these discrepancies were admitted by the assessee?

4. Whether in the facts and circumstances of the case, the Hon'ble Tribunal is right in law in reducing the GP rate to 22% whereas the AO had applied GP rate of 40% after passing a very well reasoned order which was also confirmed by the CIT (A)?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The return of income was filed on 27.10.2007 in the status of company showing an income of ₹ 12,16,452/- which was processed under section 143(1) of the Act on 17.12.2008. Assessment under Section 143(3) of the Act was completed and income was determined at ₹ 63,94,832/- on 11.12.2009, Annexure A.1 by making following additions:-

i) On account of difference in surrender amount under Section 133A amounting to ₹ 25,00,000/-.

ii) On account of low GP rate amounting to ₹ 26,78,370/-.

3. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 1.7.2011, Annexure A.2, the CIT(A) dismissed the appeal. The assessee filed appeal before the Tribunal. Vide order dated 21.11.2013, Annexure A.3, the Tribunal partly allowed the appeal. Hence the instant appeal by the

revenue.

4. We have heard learned counsel for the parties.

5. A perusal of the order passed by the Tribunal dated 21.11.2013, Annexure A.3 shows that findings have not been recorded after giving detailed reasons and considering the overall material and evidence on record. The Tribunal being final fact finding authority should have passed a well reasoned order after examining the entire evidence on record. The operative portion of the order dated 21.11.2013 reads thus:-

“We have heard the rival contentions and perused the facts of the case. The assessee is not maintaining stock register and therefore, it is not possible for the assessee to deduce accurate income and accordingly we find no infirmity in the order of learned CIT(A) who has rightly confirmed the action for invoking the provisions of section 145(3) of the Act. As regards the estimation of income, there is no identical facts of Bansal Sweets shop, Lawrence Road, Amritsar treated as comparable case which have been brought on record and therefore, the results of Bansal Sweets cannot be applicable in the present facts and circumstances of the case. The assessee as mentioned hereinabove, has declared almost similar results as in the preceding year. In the facts and circumstances and the past result of the assessee and in order to meet both ends of justice, we direct the AO to apply 22% GP rate on declared turnover which will meet both ends of justice. Accordingly, grounds 1(iv), 2, 7 and 8 are partly allowed.”

6. The Hon'ble Apex Court in ***Kranti Associates P. Limited and another vs. Masood Ahmed Khan and others***, (2010) 9 SCC 496 which statutorily requires recording of reasons and requirement of passing a reasoned order by an authority whether administrative, quasi judicial or

judicial, had laid down as under:-

“51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice

delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987)

100 *Harvard Law Review* 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19EHRR 553, at 562 para 29 and *Anya vs. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

7. In view of the above, we find that the Tribunal being final fact finding authority was required to discuss the entire evidence before arriving at the conclusion. The order passed by the Tribunal is violative of principles of natural justice and does not satisfy the requirements of a reasoned order. Consequently, the substantial questions of law are answered accordingly. The impugned order passed by the Tribunal dated 21.11.2013, Annexure A.3 is set aside and the matter is remanded back to the Tribunal to decide it afresh after hearing learned counsel for the parties in accordance with law.

(Ajay Kumar Mittal)
Judge

December 07, 2015
'gs'

(Ramendra Jain)
Judge



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