

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

**ITA No. 233 of 2014 (O&M)
Date of decision: 18.8.2015**

Shri Kewal Chaudhary

.....Appellant.

Commissioner of Income Tax I, Jalandhar

.....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. Ravish Sood, Advocate for the appellant.
Mr. Vivek Sethi, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 20.3.2014, Annexure A.7 passed by the Income Tax appellate Tribunal Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.283 (ASR)/2012 for the assessment year 2007-08, claiming following substantial questions of law:-

- i) Whether the Tribunal is right in law and facts of the case in dismissing the appeal by way of a non speaking order

without recording any independent finding or giving any reasoning, specifically in the light of the settled position of law so laid down by the Hon'ble Supreme Court in the case of ***Kranti Associates P. Limited and another vs. Masood Ahmed Khan and others***, (2010) 9 SCC 496 which statutorily requires recording of reasons by a quasi judicial authority in support of its conclusions?

- ii) Whether the Tribunal is right in law and facts of the case in sustaining the disallowance of interest on borrowed capital of ₹ 3,43,673/-?
- iii) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that as the profits amounting to ₹ 1,23,87,990/- earned by the appellant from his business during the year were sufficient to cover the impugned advances of ₹ 28,63,942/- therefore in the light of the settled position of law laid down by the Hon'ble Supreme Court in the case of ***Munjat Sales Corporation vs. CIT*** (2008) 298 ITR 298 (SC), no disallowance of interest on borrowed capital was liable to be made?
- iv) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that in the light of substantial interest free funds and accumulated amounts in the capital account available with the appellant, in the absence of any nexus between the interest free advances given and the interest bearing funds borrowed by the appellant, no disallowance of interest on borrowed capital was liable to be made?
- v) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that even otherwise as the amounts had been advanced by the appellant at different points of time during the year, therefore the disallowance of interest on borrowed capital of ₹ 3,43,673/- as regards the entire amount of advances aggregating to ₹ 28,63,942/- (supra), for the whole of the year (i.e. for a period of 12 months) could not be sustained?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a sole proprietor of a concern engaged in the business of manufacturing of batteries under the name and style of M/s Action Batteries at Jalandhar. He filed his return of income declaring net taxable income of ₹ 1,24,44,951/- on 31.10.2007 which was processed as such under section 143(1) of the Act. The case was taken up for scrutiny assessment under section 143(2) of the Act. The Assessing Officer vide order dated 8.5.2009, Annexure A.5 disallowed interest on borrowed capital at the rate of 12% per annum on the amount of the interest free advances of ₹ 28,63,942/- for the whole of the year and made a disallowance of ₹ 3,43,673/- and assessed the income of the appellant at ₹ 1,34,48,302/-. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (appeals) [CIT(A)]. Vide order dated 25.4.2012, Annexure A.6, the CIT(A) partly allowed the appeal but sustained the disallowance of ₹ 3,43,673/- made by the Assessing Officer towards interest on borrowed capital. The assessee went in appeal before the Tribunal. Vide order dated 20.3.2014, Annexure A.7, the Tribunal dismissed the appeal by merely referring to and reproducing the observations recorded by the Assessing Officer and the CIT(A) and without recording any independent finding or reasoning. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant submitted that the Tribunal has quoted the order of CIT(A) as it is without giving any reasons except that in para 7 of its order, it was stated that “we do not find any infirmity in

the order of the CIT(A)”.

5. Learned counsel for the assessee-appellant to substantiate his plea, referred to para 3.4 of CIT(A)'s order which has been quoted ditto in para 6.3 by the Tribunal without any change in coma. Further illustrations were given by him as under:-

<i>Sr.No.</i>	<i>ITAT Order</i>	<i>CIT(A) order</i>
1.	Page 95, para 6 (4 th line from top to 7 th line from bottom)	Page 83-84, para 3.1
2.	Page 95, para 6 (7 th line from bottom) to page 96 (upto 3 rd line from bottom)	Page 84-85, para 3.2
3.	Page 96 (3 rd line from bottom to page 97 (5 th line from top)	Page 85, para 3.3
4.	Page 97 (para 6.1) to page 98	Page 85-87, para 3.3.1
5.	Page 99, para 6.2	Page 87-88, para 3.3.2
6.	Page 100 (10 th line from top) to page 101 (upto 17 th line from top)	Page 89-90,para 3.5
7.	Page 101 (18 th line from top) to close of paragraph	Page 90, para 3.6
8.	Page 101, para 7	The finding of the Tribunal

6. The Hon'ble Apex Court in **M/s Kranti Associates Pvt. Ltd.**'s case (supra) dealing with the 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 Harward 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 the present case, we find that the learned counsel for the assessee, with reference to illustrations as reproduced in the earlier part, had been able to demonstrate that the Tribunal had verbatim copied the order of

CIT(A) at different places without even difference of punctuation by showing it to be an order passed by it. Thus, it cannot be said that there has been independent application of mind as the Tribunal being final fact finding authority was required to discuss the evidence before arriving at the conclusions. 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 20.3.2014, Annexure A.7 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.

8. Accordingly, the appeal stands disposed of.

(Ajay Kumar Mittal)
Judge

August 18, 2015
'gs'

(Ramendra Jain)
Judge