IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 8 of 2015 (O&M)

Date of Decision: 11.8.2015

The Commissioner of Income-tax, Faridabad

....Appellant.

Versus

M/s Rashtriya Vikas Party, Faridabad

...Respondent.

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

PRESENT: Mr. Tajender K. Joshi, Advocate for the appellant.

Mr. Vineet Garg, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 30.6.2014 passed by the Income Tax Appellate Tribunal, Delhi Bench "F", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 4079/DEL/2009, for the assessment year 2005-06, claiming the substantial questions of law as mentioned in para 3 of the appeal.

2. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee filed his return of income on 28.10.2005 declaring a total income of ₹ 3,21,596/-. The said return was processed under Section 143(1) of the Act on 31.3.2006 and the case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer found that the party received donation of ₹ 3,90,75,102/- against which the assessee had claimed

expenditure of ₹ 3,81,33,355/-. The assessee had claimed the excess of the two as an exemption of income under Section 13A of the Act. The assessment was completed at a total income of ₹ 2,93,06,330/- on 28.12.2007 (Annexure A-I) after making certain additions. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Faridabad [hereinafter referred to as "the CIT (A)"]. The CIT(A), Faridabad vide order dated 3.8.2009 (Annexure A-II) allowed the appeal by granting the relief of ₹ 2,93,06,330/-. Being dissatisfied with the order, Annexure A-II, the revenue has filed the appeal before the Tribunal, who vide order dated 30.6.2014 (Annexure A-III) dismissed the said appeal. Hence, the present appeal by the revenue.

3. Learned counsel for the appellant submitted that the Tribunal while reversing the findings of the Assessing Officer and the CIT (A) had not passed the reasoned speaking order which is the mandate as laid down by the Hon'ble Apex Court.

4. On the other land, learned counsel for the assessee supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties, we find merit in the submission of learned counsel for the revenue.

6. The Hon'ble Apex Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496** while dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi judicial or judicial, had laid down as under:-

> "17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange

context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

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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. According to the revenue, the assessee had initially claimed that the books of account were lost and the same were not produced on that count. Lateron, the books of account were recovered. However, no date and time etc. were given as to when they were lost and when they were recovered. The entirety of the facts were required to be gone into to test the veracity of the plea taken by the assessee. The order dated 30.6.2014 (Annexure A-III) passed by the Tribunal is not a speaking order giving the detailed reasons dismissing the appeal except mentioning that we find no infirmity in the findings of the CIT (Appeals). The Tribunal being final fact finding authority was required to deal with all aspects of factual matrix and then record its conclusions based thereon.

8. Therefore, the order dated 30.6.2014 (Annexure P-III) does not satisfy the requirements of being a reasoned order as enunciated by the Apex Court in **M/s Kranti Associates Pvt. Ltd's case (supra),** noticed herein above. Thus, the substantial questions of law stand answered accordingly. Consequently, after setting aside the order of the Tribunal dated 30.6.2014, the matter is remanded to the Tribunal to decide afresh after affording an opportunity of hearing to the parties in accordance with law. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

August 11, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**