IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No. 122 of 2013

Date of Decision: 11.1.2017

Commissioner of Income (Central), Ludhiana

....Appellant.

Versus

M/s MBD Printographics (P) Ltd. Jalandhar

...Respondent.

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

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri, Advocate and
Mr. Sachin Bhardwaj, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of Income Tax Appeals bearing ITA Nos. 117 to 122 of 2013 as according to learned counsel for the parties, similar issues arise for consideration in these appeals. For brevity, the facts are being extracted from ITA No. 122 of 2013.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 28.12.2012 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 506(ASR)/2011 for the assessment year 2005-06. The appeals were admitted by this Court vide order dated 18.9.2014 for determination of substantial question of law No.(i) and (ii) which are to the

following effect:-

(i) Whether on the facts and in law, the Hon'ble ITAT is justified in allowing deduction u/s 80IC of the Income Tax Act, 1961, @ 100% of its profit without properly appreciating the findings recorded by the Assessing Officer, which were based on evidences available on records after search and survey action, that the assessee did not have sufficient infrastructure and manpower and, therefore, was not manufacturing the entire produce at its unit at Gagret in Himachal Pradesh but was also getting job work done at Jalandhar (Punjab)?

(ii) Whether on the facts and in law, the Hon'ble ITAT is justified in allowing deduction u/s 80IC of the Income Tax Act, 1961, @ 100% of its profit ignoring the finding of the Assessing Officer that sister concerns of the assessee, doing the same business outside the State of Himachal Pradesh were showing lesser profit?

3. The facts, in brief, necessary for adjudication of the instant appeal as narrated therein are that the assessee derives income from printing business. A search and seizure operation under Section 132 of the Act was conducted in the MBD Group of cases on 22.1.2009. A notice under Section 153C of the Act was issued on 24.12.2009 and in response thereto, the assessee filed its return on 11.2.2010 declaring 'nil' income. The

assessee had claimed deduction under Section 80IC of the Act as it had printing facility at a unit in Gagret (Himachal Pradesh) and also got job work done from a sister concern at Focal Point, Jalandhar. The Assessing Officer vide assessment order dated 29.12.2010 (Annexure A-I) assessed the income at ₹ 4,76,35,910/- holding that the assessee was not entitled to the deduction claimed under Section 80IC of the Act for the entire profits and restricted the deduction under Section 80IC of the Act to 20% of the total profits. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 29.7.2011 (Annexure A-II) partly allowed the appeal by directing the Assessing Officer to allow the deduction as claimed by the assessee subject to the additions confirmed in the case of the assessee for the assessment year 2005-06 by the CIT(A). Against the order, Annexure A-II, the revenue filed an appeal before the Tribunal who vide order dated 28.12.2012 (Annexure A-III) dismissed the appeal holding that the CIT (A) was right in allowing deduction under Section 80IC of the Act @ 100% of the profit and gain from manufacturing including sale of Raddi. Hence, the present appeals by the revenue.

4. Learned counsel for the appellant submitted that the Tribunal while affirming the findings of the CIT(A) had not passed the reasoned speaking order which is the mandate as laid down by the Apex Court.

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

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

7. The 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).
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> 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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> 19 to 50 XX XX XX
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> 51. Summarizing the above discussion, this Court holds:
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> (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.
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> (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".

8. According to the revenue, there was a search on the assessee's premises on 22.1.2009 and certain incriminating material was found. On the basis of the said material, the Assessing Officer had held that 100% of the work of the assessee had not been done at Gagret (Himachal Pradesh) and, therefore, allowed deduction under Section 80IC of the Act, @ 20% of the profit from manufacturing. However, the CIT(A) allowed deduction under Section 80IC of the Act @ 100% of the profit and gain. The entirety of the facts was required to be gone into to test the veracity of the plea taken by the assessee. The order dated 28.12.2012 (Annexure A-III) passed by the Tribunal is not a speaking order giving the detailed reasons dismissing the appeal and affirming the findings of the CIT (A). The Tribunal being final fact finding authority was required to deal with all aspects of factual matrix and then record its conclusions based thereon. Mere concurrence with the view expressed by the CIT(A) is not sufficient and the Tribunal was required to record the reasons for dismissing the appeal.

9. In view of the above, the order dated 28.12.2012 (Annexure A-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 question of law stands answered accordingly. Consequently, after setting aside the order of the Tribunal dated 28.12.2012 (Annexure A-III), the matter is remanded to the

Tribunal for fresh adjudication after affording an opportunity of hearing to the parties, in accordance with law.

10. The appeals stand disposed of.

(AJAY KUMAR MITTAL)
JUDGE

January 11, 2017 **(RAMENDRA JAIN)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes**