

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-196-2016

Date of Decision: 22.10.2018

The Commissioner of Income Tax (Exemptions), Chandigarh
...Appellant.

Versus

M/s Tara Ripu Damanpal Trust, Kurukshetra
...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.**

PRESENT: Mr. Denesh Goyal, Sr. Standing Counsel for the appellant.

None 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 7.1.2016 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 309/Chd/2015, claiming the following substantial questions of law:-

“(i) Whether on facts and circumstances of the case and in law the ITAT had erred by failing to consider the findings of the Commissioner of Income Tax who concluded that the expenses incurred by the trust are not in consonance with the objects of the trust and without any essence of rendering services, for which it was formed?

- (ii) Whether on facts and circumstances of the case and in law the ITAT has erred by placing reliance on the judgment of Hon'ble Apex Court in the case of Kishinchand Chellaram Vs. CIT (1980) 125 ITR 713 when the applicant-trust that was provided ample opportunities by the ACIT, Circle Kurukshetra and ITO (E), Ambala in difference to the powers conferred upon CIT(E) to get enquiries conducted, failed to discharge its onus to prove that its income was not exigible to taxation?
- (iii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred by placing reliance on the judgment of Hon'ble Rajasthan High Court in the case of CIT Vs. Vijay Vargiya Vani Charitable Trust (2014) 369 ITR 360 when the applicant trust has applied for registration u/s 12AA after the expiry of one year and one month since its creation on 20.6.2013 and the trust is not in the nascent stage to prove its charitable intent before the CIT?
- (iv) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in directing the CIT to grant registration to the assessee, instead of referring it back to the CIT for re-examination, even as it acknowledges that the results of the enquiries got conducted by the

competent authority were not confronted to the applicant?

- (v) Whether in the facts and circumstances of the case and in law the Hon'ble ITAT is right in granting registration to the society and setting aside the order of Commissioner, hence the impugned judgment is perverse?

2. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee-Trust was created and registered on 20.6.2013 vide Registration No. 2069 of 2013-14. An application under Section 12AA of the Act in form No.10A for grant of registration was filed in the office of Commissioner of Income Tax, Karnal on 12.8.2014. The said application was transferred to the office of Commissioner of Income Tax (Exemption), Chandigarh [for brevity 'the CIT(E)']. The CIT(E) vide order dated 16.2.2015 (Annexure A-1) rejected the said application by noticing that the Assessing Officer had not recommended the case for grant of registration under Section 12AA of the Act as the Trust had failed to furnish information/documents as desired by the Assessing Officer. Further, it was mentioned that no work of charity has been done by the Trust and the gross receipts of the Trust are ₹ 97,508/- out of which ₹ 2582/- had been incurred towards office expenses and other expenses. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal who vide order dated 7.1.2016 (Annexure A-2) allowed the appeal holding that the CIT(E) had refused to grant registration without disclosing the complete contents of the report and without confronting the same to the assessee. The Tribunal had directed the

CIT(E) to grant registration to the assessee under Section 12AA of the Act.

Hence, the present appeal by the revenue.

3. Learned counsel for the appellant submitted that the impugned order dated 7.1.2016 (Annexure A-2) does not satisfy the test of being a reasoned and speaking order and is, thus, liable to be quashed. It has further been urged that the impugned order has been passed in violation of the principles of natural justice.

4. After hearing learned counsel for the appellant, we find merit in the submission of learned counsel for the revenue.

5. A perusal of the order, Annexure A-2 shows that it is neither speaking nor gives any cogent reasons for granting registration to the appellant under Section 12AA of the Act. The Tribunal while allowing the appeal of the assessee had noticed that the CIT(E) refused registration without disclosing the complete contents of the report and without confronting the same to the assessee. Further, we find that the CIT(E) as well as the Tribunal had not passed the reasoned speaking order which is the mandate as laid down by the Apex Court.

6. Delving into the issue relating to the passing of the speaking order by an authority whether administrative, quasi judicial or judicial, it was laid down by the Supreme Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496** 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 a 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.

1. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubberstamp 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) 19 EHRR 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. Further, the Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary

technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at

Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of **Cooper v. Wandsworth Board of Works, (1963) 143 ER 414**, the principle was thus stated: "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat". Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

8. In view of the above, the orders dated 16.2.2015 (Annexure A-1) passed by the CIT(E) and dated 7.1.2016 (Annexure A-2) passed by the Tribunal do 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)** and is passed in violation of the principles of natural justice as per

law laid down by the Supreme Court in **V.K. Awasthy's case (supra)**, as noticed hereinabove. Accordingly, the appeal is allowed and the orders (Annexures A-1 and A-2, respectively) are quashed. The matter is remitted to the CIT(E) to pass a fresh speaking order after affording an opportunity of hearing to the assessee in accordance with law. Needless to say that anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

October 22, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes