

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 4464/Del/2016 : Asstt. Year : 2012-13

ITA No. 4465/Del/2016 : Asstt. Year : 2013-14

H-One India Pvt. Ltd., 12, Udyog Vihar, Surajpur, Greater Noida, U.P.-201305	Vs	Asstt. Commissioner of Income Tax, TDS, Noida
(APPELLANT)		(RESPONDENT)
PAN No. AAACH3032L		

Assessee by : None

Revenue by : Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing : 14.12.2017	Date of Pronouncement : 22.12.2017
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ORDER

Per N. K. Saini, AM:

These two appeals by the assessee are directed against the common order dated 30.06.2016 of Id. CIT(A)-I, Noida for the assessment years 2012-13 and 2013-14.

2. Since, the issue involved is common in both these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. During the course of hearing nobody was present on behalf of the assessee. Therefore, the appeals are decided *ex-parte* after considering the submissions of the ld. DR.

4. The only issue involved in these appeals relates to the sustenance of the demand raised by the AO u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred to as the Act) amounting to Rs.9,80,039/- and Rs.7,65,186/- for the assessment years 2012-13 and 2013-14 respectively.

5. Facts of the case in brief are that the AO raised the impugned demands by observing that the assessee had made payment to the transporters but had not deducted tax u/s 194 I of the Act.

6. Being aggrieved the assessee carried the matter to the ld. CIT(A) who passed the *ex-parte* order and sustained the demand raised by the AO.

7. Now the assessee is in appeal. The ld. DR supported the impugned order passed by the ld. CIT(A).

8. We have considered the submissions of the ld. DR and perused the material available on the record. In the present case, it is noticed that the ld. CIT(A) although mentioned in

para 2 of the impugned order that Sh. D.D. Bansal, FCA appeared on behalf of the assessee. At the same time, on the face of the impugned order in Column Nos. 12 & 13, he has mentioned that nobody was present on behalf of the assessee or the department. In the present case, the ld. CIT(A) in para 6 of the impugned order stated as under:

“6. The appellant has also placed reliance on the orders of my ld. predecessor for A.Ys. 2008-09 and 2009-10 where my ld. predecessor accepted the contention of the appellant and deleted the impugned assessment orders. With due respect to my ld. predecessor I am in disagreement with my ld. predecessor on this issue.”

9. From the above observations of the ld. CIT(A), it is crystal clear that the issue was decided by the predecessor of the ld. CIT(A) for the assessment years 2008-09 and 2009-10 in favour of the assessee but the ld. CIT(A) did not agree with his predecessor without assigning any cogent reason. Therefore, the impugned order is a non-speaking order in the eyes of law. It is well settled that the order/judgment unsupported by reason is not a judgment in the eyes of law and that the reasons are the links between the material on record and the conclusion thereafter by the Court/Appellate Authority. In our opinion, the ld. CIT(A) should have properly considered the arguments of the assessee as well as the findings given by the AO and thereafter he should have

given the reasons as to why the view taken by his predecessor in the similar circumstances was not sustainable or what were the reasons for his disagreement.

10. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs Palwal Cooperative Sugar Mills Ltd (2006) 284 ITR 153 has held as under.

"Every judicial / quasi judicial body / authority must pass a reasoned order which should reflect the application of mind of the concerned authority to the issues / points raised before it. The requirement of recording reasons is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process. Another reason which makes it imperative for quasi judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge them by filing statutory appeal and revision but a/so by filing writ petition under article 226 of the Constitution. Such decisions can also be challenged by way of appeal under article 136 of the Constitution of India. The High Courts have the power to issue writs of certiorari to quash the orders passed by quasi judicial authorities / Tribunals. Likewise in appeal the Supreme Court can nullify such order / decision. The power of judicial review can be effectively exercised by the superior courts only if the order under challenge contains reasons. If such order is cryptic and devoid of reasons, the courts

cannot effectively exercise the power of judicial review."

11. The Hon'ble Supreme Court in the case of Mangalore Ganesh Beedi Works Vs CIT and another (2005) 273 ITR 56 has held as under:

"Though in an order of affirmation in an appeal u/s 260A of Income Tax Act, 1961 repetition of the reasons elaborately may not be necessary, the arguments advanced / points urged have to be dealt with. Reasons for affirmation have to be indicated, though in appropriate cases they may be brief."

It has further been held ó

"Recording of reasons is a part of fair procedure. Reasons are the harbinger between the mind of the maker of the decision in the controversy and the decision or conclusion arrived at. They substitute subjectivity with objectivity. Failure to give reasons amounts to denial of justice."

As we have already pointed out that in the present case, Ld. CIT(A) has not recorded any reason in support of his decision, therefore, the failure to give reasons amounts to denial of justice as per the ratio laid down by the Hon'ble Supreme Court in the aforesaid case and the present case requires re-adjudication at the level of Ld. CIT(A).

12. The Honorable Punjab & Haryana High Court in the case of CIT Vs Vikas Chemi Gum India (2005) 276 ITR 32 has held as under:

"The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process. Another reason which makes it imperative for the quasi judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under articles 226 of the Constitution. Such decisions can also be challenged by way of appeal under article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a quasi judicial authority / Tribunal. Likewise in appeal the Supreme Court can nullify such order/ decision. These powers can be effectively exercised by the superior courts only if the order under challenge contains reasons."

As pointed out earlier that the impugned order passed by the Ld. CIT(A) is without any proper reasoning, therefore, in view of the ratio laid down in the aforesaid referred to Judicial pronouncement, it deserves to be remanded back for fresh adjudication at the level of Ld. CIT(A).

13. In the present case, as we have already noted, the order passed by the Ld. CIT(A) is a non-speaking order and devoid of reasons so, it is a cryptic order in the eyes of law and not sustainable. Therefore, we set aside the impugned order of Ld. CIT(A) and remand the issue back to his file for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to both the parties.

14. In the result, the appeals of the assessee are allowed for statistical purposes.

(Order Pronounced in the Court on 22/12/2017)

Sd/-
(K. N. Chary)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 22/12/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR