IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.750/PUN/2022
निर्धारण वर्ष / Assessment Year : 2013-14

DCIT, Circle-5, Pune.	Vs.	Shri Subhash Hastimal Lodha, 417-419, Gate No.2, Market Yard, Pune- 411037. PAN : AAQPL3064M
Appellant		Respondent

Revenue by : Shri Ajay Kumar Kesari
Assessee by : Shri B. C. Malakar

Date of hearing : 05.09.2023
Date of pronouncement : 06.09.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is a recalled matter vide order dated 04.09.2023 in M.A. No.93/PUN/2023 for the assessment year 2013-14 filed against the appeal of the Revenue in ITA No.750//PUN/2022 dated 27.02.2023.

2. This is an appeal filed by the Revenue directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 27.08.2022 for the assessment year 2013-14.

3. The Revenue raised the following grounds of appeal :-

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the AO was not justified factually and legally in denying the assessee's claim of deduction u/s. 54B of IT Act and thereby deleting the addition made in the assessment order.*
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> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the plethora of facts and evidences (such as Satellite images, 7/12 revenue records, Statement on oath of Talhati, Field verification report of Income tax inspector etc), brought on record by the AO all of which clearly established that no agricultural activity had been carried out on the land in question and consequently assessee's claim of deduction u/s 54B was not allowable since the basic requirements for allowing the deduction were not satisfied.*
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> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not giving due importance to assessee's statement recorded on oath and assessee's own admission during the course of assessment proceedings regarding the falsity of his claim and offering the LTCG for taxation.*
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> *4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to treat assessee's income (of Rs. 69,344/-) as agricultural income despite there being no supporting evidence for the same and despite it being proved by the AO that no agricultural activity has been carried out by the assessee in the said period.*
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> *5. For these and such other reasons as may be urged at the time of the appeal."*

4. Briefly, the facts of the case are as under :-

The respondent-assessee is an individual deriving income from the business of trading in shares, financing, real estate dealing, generation of wind power etc. The Return of Income for the assessment year 2013-14 was filed on 29.09.2013 declaring total income of Rs.4,78,70,740/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income

Tax, Circle-5, Pune ('the Assessing Officer') vide order dated 30.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.29,50,61,981/-. While doing so, the Assessing Officer disallowed the claim for deduction u/s 54B of Rs.24,71,17,100/- with which, we are concerned. The factual matrix of the case is as under :

During the previous year relevant to the assessment year under consideration, the respondent-assessee had sold the land situated at Gat No.84, 91, 195 of Kirkatwadi, Pune admeasuring 2H 14R for a consideration of Rs.24,00,00,000/- to developer. In the return of income, the assessee claimed deduction u/s 54B of Rs.18,34,37,980/- on reinvestment of the sale proceeds of the agricultural land and Rs.6,36,79,120/- in capital gain deposits scheme. During the course of assessment proceedings, the Assessing Officer conducted enquiries and visited the land. Based on the enquiry conducted, physical inspection, he concluded that the land sold was not an agricultural land since the land in question is surrounded by the township developed by M/s. D. S. Kulkarni Developers Ltd. and the land was not used for the agricultural purpose for preceding 2 years. Even the statement of the

respondent-assessee was recorded u/s 131 of the Act, wherein, the respondent-assessee, in answer to question no.9, extracted page no.3 of the assessment order, had stated that he had no proof of any agricultural activities conducted by him other than the 7/12 extract. He further stated that he outsourced of farming activities to one Shri Vivek Gour Brom. The Assessing Officer also examined the said Shri Vivek Gour Brom on oath and the statement of said Shri Vivek Gour Brom was also recorded on 04.03.2016. Though, he had stated that he was looking after the agricultural land of respondent-assessee by arranging labour for minor work etc.. He also stated that he had no proof of any agricultural activities carried out on behalf of the respondent-assessee. The respondent-assessee also submitted copies of 7/12 extract dated 22.06.2011. However, the Assessing Officer had called for the photocopies of 7/12 extract from the office of Talathi, which according to the Assessing Officer, had shown the land was under 'gawatpad' (weedy fallow land) or the 'pad' (fallow land), whereas, the 7/12 extracts submitted by the respondent-assessee had mentioned that the lands were 'gawatpad' (weedy fallow), ghewada (green beans), watana (peas), bhuimug (groundnut). The Assessing Officer also issued summons to the

Talathi, Shri Maruti Sadu Gosawale, who was Talathi on 22.06.2011 and recorded statement on 11.03.2016, wherein, he had stated that the 7/12 extracts submitted by the respondent-assessee were not issued by him. His statement recorded was extracted at page no.7 of the assessment order. Even the Talathi holding office as on 14.03.2016 was also examined, wherein, he had stated that 7/12 extracts submitted by the respondent-assessee were not issued by him. During the course of assessment proceedings, the respondent-assessee vide letter dated 11.03.2016 addressed to the Assessing Officer had agreed to offer the tax to long term capital gains of Rs.24,71,17,100/- arisen on sale of said land. The Assessing Officer also used Google Satellite Images of the land, concluded that the land was not used for agricultural purposes for last preceding 2 years, accordingly, denied the claim for deduction u/s 54B of the Act.

5. Being aggrieved, an appeal was filed before the NFAC contending that the 7/12 extracts clearly indicated that the crops grown on the land and the respondent-assessee had shown agricultural income of Rs.69,344/- and the Assessing Officer ought not to have placed reliance on the submission given by the Talathi

without affording opportunity of cross-examination etc. The NFAC vide impugned order considered the additional evidence after calling for remand report, allowed the claim of the respondent-assessee u/s 54B of the Act.

6. Being aggrieved, the Revenue is in appeal before us in the present appeal.

7. The ld. CIT-DR submits that the NFAC without examining in detail evidence such as Google Satellite Images, 7/12 revenue records, statement on oath of Talathi and field verification report of Income Tax Inspector etc., simply accepted the contention of the respondent-assessee. He further submits that the statement given by the respondent-assessee constitutes important piece of evidence unless otherwise retracted by substantiation.

8. On the other hand, the ld. AR submits that the evidence on record clearly established that the respondent-assessee had carried on agricultural activities on the subject land and the NFAC on proper appreciation of the evidence held that the respondent-assessee had carried on the agricultural activities and, therefore, no interference is called for with the order of the NFAC.

9. We heard the ld. CIT-DR and perused the material on record. The issue in the present appeal relates to allowability of deduction u/s 54B of the Act. The necessary conditions for availing the benefit of deduction u/s 54B are that (a) the capital gains arise for transfer of land by an assessee being an individual. (b) such land was used by an assessee for agricultural purposes in the 2 years immediately preceding to the date of transfer and (c) the assessee within the period of 2 years after date of transfer, purchase any other land for further use for agricultural purposes. In the present case, the Assessing Officer had concluded that the land which was sold by the respondent-assessee was not used for agricultural purposes in 2 years immediately preceding the year of the sale of land based on the following evidence :-

(i) the land sold was not an agricultural land for the purpose of the deduction u/s. 54B of the Act as no agricultural activities had been carried out in the said land in past years prior to the date of sale.

(ii) no agricultural income had been offered / shown by the appellant in the past years' returns of income filed and the same had only been declared of Rs. 69,344/- in this relevant AY 2013-14.

(iii) the revenue records including 7/12 extracts did not mention the agricultural activities and crops grown.

(iv) the 7/12 extracts which had been furnished by the appellant during assessment proceedings before the AO

were fabricated and forged as the AO had issued summons u/s. 131 to the then Talathi whose signature was found in 7/12 extracts and he denied in his statement that he had put any signature on such 7/12 extracts and therefore mentioning in the 7/12 extracts of crops grown such as Jowar, Bajara etc. were also false. The enquiry conducted by the AO from the Talathi who was holding office during the course of assessment proceedings by issuing notice u/s. 133(6) revealed that no such 7/12 extracts had been issued from the Talathi's office, as outward register did not mention any such outward entry in the name of the assessee for issuing such 7/12 extracts.

(v) the statement u/s. 131 recorded of Shri Vivek Broome who the appellant had claimed to have cultivated the land had initially admitted of such cultivation but could not give any details and evidences in regard to carrying out of any agricultural activities on the said land and further had denied of such cultivation done by him.

(vi) the satellite images taken from the Google Earth taken by the AO during the course of assessment proceedings which had also been part of the assessment order indicated that no such crops were grown or agricultural activities done on the said land as there was no green shade.

(vii) the Inspector attached to AO had reported on local enquiry on the land and surrounding places adjacent to the land that the land contained murrum, pebbles etc. and was not cultivable and no agricultural activities had been carried out in the said land in past years and nearest to the land the development of a project by the builder and developer DS Kulkarni Developers Ltd. who had also owing the said land after sale was being done in the name of DSK Vishwa.

(viii) the land admeasuring 2.14 Hectors was purchased by the appellant for a lesser amount but had been sold for a higher consideration of Rs. 25,00,00,000/- wherein stamp duty valuation was Rs. 2,25,12,800/- and therefore such huge appreciation in the said land could not be for sale of an agricultural land, as no farmer shall pay such huge purchase consideration for purchase of such land.

(ix) the appellant had surrendered his claim of deduction u/s. 54B of the Act of Rs. 24,71,17,100/- thereby offering the income from Long Term Capital Gains for the purpose of taxation vide his letter dated 11/03/2016 submitted during the course of assessment proceedings.

On appeal before the NFAC, the NFAC merely extracted the submissions made by the respondent-assessee, thereafter, simply jumped to the conclusion that the Assessing Officer was not justified in denying the claim for deduction u/s 54B without examining in detail the facts and the evidence brought on record by the Assessing Officer in the form of statement of Talathi and the 7/12 extracts etc, in-fact, no reasons whatsoever were given by the NFAC in support of the conclusion reached by it. The order passed by NFAC is bereft of any factual discussion of case nor met the reason given by Assessing Officer while denying claim for deduction u/s 54B of the Act.

10. The Hon'ble Supreme Court in the case of Siemens Engg. vs. UOI, AIR 1976 SC 1785 held that the rule requiring reasons to be

given in support of an order is like the principle of *audi alteram partem*, a basic principle of natural justice, which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. Further, the Hon'ble Supreme court in the case of CIT vs. Walchand and Co. P. Ltd. (1967) 65 ITR 381 (SC) held that the practice of recording a decision without reasons in support cannot, but be deprecated.

In S. N. Mukherjee vs. Union of India [(1990) 4 SCC 594], the Supreme Court held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself serves a statutory purpose viz., it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making.

In M/s Woolcombers of India Ltd. v. Woolcombers Workers Union and others [AIR 1973 SC 2758], the Supreme Court while deciding an award under Section 11 of the Industrial Patna High Court CWJC No.1550 of 2016 dt.16-11-2017 Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is

to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The Court said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of the Court and in absence of reasons, it would be difficult for the court to ascertain whether the decision is right or wrong.

It is well settled by now that reason is the life of law. It is an indispensable component of a decision making process. A non-speaking and non-reasoned order smacks arbitrary exercise of judicial or quasi-judicial or even administrative power.

15. The Hon'ble Apex Court in Kranti Associates (P.) Ltd. v. Masood Ahmed Khan [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:—

> *'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.

(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".'

11. It would be apposite to refer to para 11.13 of the order of the NFAC, which is operative part of the impugned order, it would clearly show that the NFAC merely extracted the contention of the assessee and accepted without giving any independent, cogent and convincing reasons for accepting the claim of the assessee. It reads as under :-

"11.13 In view of the facts of the case of the appellant as discussed in detail above and further analysed with reference to the assessment order passed by the AO vis-a-vis the submissions made by the appellant both during assessment proceedings and during appellate proceedings, I hold that the AO was not justified factually and legally in denying the appellant's claim of deduction u/s. 54B of the Act of Rs. 24,71,17,100/- and, therefore, the addition made of the said amount in the assessment order is hereby deleted. Ground Nos.3 to 5 raised by the appellant are accordingly allowed."

12. The Hon'ble Supreme Court in the case of Pankaj Garg vs. Meenu Garg (2013) 3 SCC 246 reiterated the settled position of law an order which does not contain any reason is no order in the eyes

of law. Therefore, the order passed by the NFAC does not meet the requirements of being a reasoned order as enunciated by the Hon'ble Supreme Court in the decisions referred to above supra and cannot be sustained in the eyes of law. The NFAC had not met the reasoning of the Assessing Officer and there is no material brought before the NFAC or before us controverting the findings of the Assessing Officer that the respondent-assessee had filed fabricated/forged documents of 7/12 extracts. Further, there is material on record in the form of the statement on oath of Talhati that no agricultural operation was carried on. The finding of the Assessing Officer that the land was purchased by the respondent-assessee not with the intention of carrying out any agricultural activities, but with the intention of development of properties remains uncontroverted. There is no cogent material brought on record in support of retracting the statement of the respondent-assessee withdrawing the claim for deduction u/s 54B of the Act during the course of assessment proceedings.

The fact that the agricultural lands were situated within the 8 kilometres from the Municipal Corporation of Pune remain uncontroverted. In the circumstances, the order of the NFAC

cannot be sustained in the eyes of law. Thus, the respondent-assessee had failed to discharge the onus of proving that the lands sold were agricultural lands. Therefore, the order of the NFAC is reversed and the addition made by the Assessing Officer is restored. Thus, the grounds of appeal filed by the Revenue stand allowed.

13. In the result, the appeal filed by the Revenue stands allowed.

Order pronounced on this 06th day of September, 2023.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 06th September, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.