आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.865/Ahd/2023
Assessment Year : 2020-21

Babubhai Ramanbhai Patel 14, Darshak, Swastik Society Punjab Hall Lane Navrangpura Ahmedabad 380 009. PAN : ABYPP 8048 A	Vs	ITO, Ward-1(3)(1) Ahmedabad.
(Applicant)		**(Responent)**

Assessee by	:	Shri Bandish Soparkar, AR and Shri Hemanshu Shah, AR
Revenue by	:	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 23/10/2024**
घोषणा की तारीख /**Date of Pronouncement: 06/11/2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The above appeal has been filed by the assessee against order passed by the Ld.Commissioner of Income-Tax(Appeals),National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "ld.CIT(A) dated 17.10.2023 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Years 2020-2021.

2. Grounds raised by the assessee in the appeal read as under:

"1. In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax(Appeals) has grossly erred in points of law and facts.

2. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax (Appeals) has grossly erred in confirming addition of income from other sources of Rs.61,20,000 u/s 56(2)(x)(b) of IT Act.

3. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax (Appeals) has grossly erred in confirming the demand of Rs 22,59,772.

4. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax (Appeals) has grossly erred in not deciding ground regarding charging of the interest u/s 234A of Income Tax Act of Rs.1,07,605.

5. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income Tax (Appeals) has grossly erred in confirming the penalty proceedings u/s 274 r.w.s 270A of the Act I.T.Act."

3. Solitary issue in the present appeal relates to the addition made to the income of the assessee on account of immovable properties purchased by it for a consideration less than the stamp duty value. The difference between the two being added to the income of the assessee in terms of the provisions of section 56(2)(x) of the Act.

The specific facts relating to the property purchased by the assessee being that it pertained to plots of land at Chandlodiya, Ahmedabad, identified as "SN.296/1/1-FP 30/1/2, which was purchased for a total consideration of Rs.2,05,000/- while its stamp duty value was Rs.63,25,000/-. The difference of Rs.61,20,000/- was treated as assessee's income in terms of section 56(2)(x)(b) of the Act.

4. We have heard both the parties. We have also gone through the orders of the AO and the ld.CIT(A).Both the orders of the authorities below, we find are non speaking orders passed in clear violation of the principles of natural justice.

5. The assessment order we find assigns no reasons for rejecting the assessee's contention made before the AO against the addition proposed by the AO u/s 56(2)(x) of the Act.The contents of the order

reveal that when the assessee was show caused by the AO as to why addition on account of the difference in the stamp duty value of the property purchased by the assessee, and the actual consideration paid by it be not added to the income of the assessee in terms of section 56(2)(x)(b) of the Act, the assessee had filed a detailed explanation against the proposed addition. The assesse had submitted to the AO that the said two plots of land were not purchased in the impugned year but were purchased in the year 2008 and 2010, i.e. much prior to the impugned order before us i.e. Asst.Year 2020-21. The assessee had pointed out that in the said years the assessee had entered into an agreement to sell and had paid entire amount of consideration to the seller, but the sale deed was registered in the impugned year.The assessee had also pointed out that the aforementioned facts of the assessee entering into an agreement to sell in the year 2008 and 2010, and paying entire consideration in those years, found mention in the registered sale deed. The assessee also pointed out that the possession of the said two pieces of land had also being taken by the assessee in those years itself, which fact also found mention both in the agreement to sell and even the registered sale deed. Copies of all the documents were placed before the AO. Response of the assessee to the show cause notice of the AO is reproduced at para 9.1 of the order as under:

> *"Vide para-10 of the above referred letter, your goodself has show caused that why value of stamp duty of property Rs.63,25,000/- should not be considered on purchase of two land plots at Chandlodiya, Ahmedabad for which I paid consideration of Rs.2,05,000/-. It is also mentioned that differential amount of 61,20,000/- (63,25,000 - 2,05,000) should not be treated as income from other sources ujs.56(2)(x)(b) of I.T. Act. In this respect,*
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> *I humbly wish to submit as under.*
> *1) Firstly, it is submitted that I purchased the two land plots at Chandlodiya, Ahmedabad for aggregating sum of Rs.2,05,000/- comprising of two payments.*

2) The one land was acquired on 27-03-2008 for payment of Rs. 1,00, OOO/- . The copy of sale deed is enclosed herewith which shows that I acquired asset. The possession was also given to me. Copy enclosed marked as Annexure-A.

3) The second land was acquired on 10-11-2010 for payment of Rs.1,05,000/-. The possession was also given to me. The copy of sale deed is enclosed herewith Annexure-B.

4) Later on, the sale deed of both land plots was again executed again on 17-09-2019. Copy enclosed marked as Annexure-C.

5) This shows that first land was acquired in March, 2008 and second land was acquired in November, 2010. The possession of the land plots were also taken on respective dates. Not only that but even in the sale deed dt 17-09-2019, the reference of possession in the year 2008 and 2010 was also categorically mentioned at pages 12 and 14 of the said sale deed dt JI-092019.

6) In the circumstances, the stamp duty valuation made by the stamp authority on the purchase of properties on execution agreement dtd. 17-19-2019 cannot be taken for the basis for making addition u/s.56(2)(x)(b) of lT. Act. In fact, the land plots were acquired in earlier years 2008 and 2010.

9.2. In the written explanation, the assessee stated that he has taken possession of the two lands on 27.03.2008 and 10.11.2010 total amount to Rs. 2.05.000/-, by virtue of agreement of sale. Incompliance to the above show cause notice two agreements of sale are uploaded in Annexure A and B. The assessee registered his two lands on 17.09.2019 in the office of the SUB REGISTRAR AHMEDABAD-13 (CITY-AGRI). In view of the above discussion the submission/explanation of the assessee is carefully considered and not accepted."

6. Despite the assessee contending so, that the property had not been purchased in the impugned year, the AO after noting the averments of the assessee ,merely rejected the same without giving any reasons for doing so, and simply stated that the explanation of the assessee was carefully considered and not accepted. His cryptic non-reasoned finding in this regard are recorded at para 9.2 of his order as under:

"9.2. In the written explanation, the assessee stated that he has taken possession of the two lands on 27.03.2008 and 10.11.2010 total amount to Rs.2,05,000/-, by virtue of agreement of sale. Incompliance to the above show cause notice two agreements of sale are uploaded in Annexure A and B. The assessee registered his two lands on 17.09.2019 in the office of the SUB REGISTRAR AHMEDABAD-13 (CITY-AGRI). In view of the above discussion

the submission/explanation of the assessee is carefully considered and not accepted."

7. As is evident from the above, despite assesses submissions as above, the AO simply rejected the same without assigning any reasons and without even mentioning a word on the assesses submissions. He simply took note of the fact that the registration of sale deed of the said two properties took place in impugned year and then went on to make addition of the difference between the stamp value and actual consideration to the income of the assessee under section 56(2)(x)(b) of the Act. Not a whisper in his order for rejecting assesses submission of the impugned properties not being purchased in the impugned year, having been paid for and possession taken in earlier years, all facts duly substantiated with evidence.

8. The situation before the ld.CIT(A) is no better. In fact, it is even worse. Taking the opportunity of hearing before the ld.CIT(A), the assessee filed a detailed submissions before him, which were placed before us in the paper book at page no.53 to 61, wherein he reiterated the contentions made before the AO that the addition made were unjustified and not in accordance with law, for the reason that the properties were not purchased in the impugned year at all. The documentary evidences in this regard, placed before the AO were also placed before the ld.CIT(A). The assessee also referred to several case law in this regard before the ld.CIT(A). The ld.CIT(A) unfortunately follows the same pattern for passing his order as that of his subordinate, passing again a non-speaking order while dismissing assesses appeal. Without any discussion about the assesses detailed submissions made before him, the Ld.CIT(A) confirms the order of the AO stating that the assessee has given no reason for registering the purchase of the property in 2019 despite having purchased the

property in 2008 and 2010, and also that he was unable to understand why the assessee is considering the purchase made in 2008 and 2010 as purchase for this purpose. He also goes to state that the assessee has given no reason for not considering 2019 as the year of purchase of property. The finding of the ld.CIT(A) at para 4.2.1 of his order read as under:

> *"4.2.1 The appellant gave his written submission on 08.06.2023. According to the appellant he has purchased two plots of land at Chandlodiya, Ahmadabad for sum of Rs.2,05,000/-. In the year 2008 and 2010. He has-further mentioned that sale deeds of said plots were again executed on 17.09.2019. The appellant also given some reasons why the second sale deed was executed in the year 2019. As per the contention of the appellant since the properties were purchased in the year 2008-09 and 2011-12 and hence above said section is not applicable in his case. According to him the said section was applicable only for those transactions which were done on or after 01.04.2017.* ***I have gone through the submissions of the appellant and noticed that the appellant failed to furnish the reason why second sale deed in the year 2019 as taken place. It is also not understandable that why he is considering the purchase made in 2008 and 2010 as purchase for this purpose. I find that the appellant either before the A.O. or during appellant proceedings has not able to .substantiate his claim for not considering the purchase in the year 2019.1 uphold the addition made by the A.O. and dismiss the ground of the appellant."***

9. Clearly the ld.CIT(A)'s order appears to have been passed without any application of mind at all . Without finding any infirmity in the assesses submissions , the Ld.CIT(A) appears to be luking for reasons to dismiss assesses appeal when he states that the assesse had given no reason why the sale deed was registered in 2019. This when neither the AO nor the ld.CIT(A) ever asked the assessee the reason why the registration took place after so many years.

10. As for his finding that he was unable to understand why the assessee was considering the purchases to have been made in 2008 and 2010, this simply demonstrates the complete lack of

understanding on the part of the ld.CIT(A). It is, but, clear from the order of the authorities below that the assessee had repeatedly stated the reasons for considering purchase of property in 2008 and 2010 being that he had made all payments for the purchase of the impugned plots of land and even the possession of the said land in those years, and it was primarily for this reason that he had contended that the purchase of land be treated in these impugned year and not in the year when only the technical formality of registering the purchase of land was done.

Clearly both the authorities below have passed non-speaking orders. There is no reason at all in the orders of the authorities below for rejecting assesses explanation and invoking section 56(2)(x) of the Act. Resulting in no clarity as to what finding is to be challenged in appeal against the said orders. Such orders are violative of the principles of natural justice embodied in the maxim *audi alteram partem* which demand justice not only to be done but also appear to be done.

11. Courts have time and again reiterated that the recording of reasons in support of an order is a basic principle of natural justice, and this rule must be observed in its proper spirit. That mere pretense of compliance with it would not satisfy the requirement of law. Courts have asserted the necessity of giving reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction. They have pointed out that firstly, it is to prevent unconscious unfairness or arbitrariness in reaching the conclusions. It has been emphasized that it is a well settled principle that justice should not only be done but should also appear to be done; that reasoned conclusions have the appearance of justice and unreasoned

conclusions may be just but they may not appear to be just to who read them. It is also pointed out that appeal lies from the decisions of judicial and quasi-judicial authorities and a judgment which does not disclose the reasons will be of little assistance to the Courts. Pointing out so, the Courts have emphasised that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

12. In the case of Rasiklal Ranchhodbhai Patel Vs. CWT, 121 ITR 219, Hon'ble Gujarat High Court, the jurisdictional High Court, noting the principle *audi alteram partem* struck down the order of the Commissioner noting failure to record reasons in his order,. The Hon'ble High Court took note of several decisions of the Hon'ble Apex Court while arriving at this finding, which are cited in the order as under:

i) Desai (NM) Vs. Testeels Ltd., CA No.245 of 1970 (SC)

ii) Maneka Gandhi (Smt.) Vs. UOI, AIR 1978 SC 597;

iii) Siemens Engg. And Mfg. Co. of India Ltd. Vs. UOI, AIR 1976 SC 1785

iv) UOI Vs. Capoor (ML), (1974) AIR 1974 SC 87;

v) Woolcombers of India Ltd. Vs. Woolcombers Workers Union (1973) AIR 1973 SC 2758

13. Similarly, Hon'ble Bombay High Court in the case of Bharat Nidhi Ltd. vs UOI, 92 ITR 1, while dealing with non-speaking order passed by the CBDT in the case of an assessee seeking approval as investment trust company and also seeking exemption from payment of super tax under Notification issued by the CBDT, held that the CBDT is bound to pass a speaking order and give reasons in support of its finding that the petitioner was not entitled to exemption. Noting that no reasons were given by the CBDT while doing so, the Hon'ble High Court noted that the order of the Board left the position vague

and did not indicate if any of the conditions had or had not been satisfied and if any of the conditions had not been satisfied, which one it was. The Hon'ble High Court noted, the order did not give reasons in support of its finding, and therefore did not show that the Board had applied its mind to a question on hand, and the order of the Board was accordingly held to be non-sustainable. The relevant finding of the Hon'ble Court in this regard are as under:

> *"4. Mr. V. S. Desai has challenged the impugned order on the ground that it is not a speaking order and it does not show on the face of the record that the Board had applied its mind to the question at issue. The second ground of challenge is that the reasons given in the counter-affidavit do not in law make out any sufficient ground to reject the application of the petitioner and to refuse it the exemption it had applied for.*
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> *5. I have heard the learned counsel for the parties. The impugned order is annexure "F" and it reads as follows:*
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> > *"I am directed to refer to your letter dated the 9th June, 1961, on the above-mentioned subject and to say that since all the conditions laid down in Notification No. 47 dated the 9th December, 1933, are not satisfied by the company, the Board regrets it is not possible to approve the company as an investment trust company for the purpose of super-tax exemption contained in the said Notification."*
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> *6.* ***On the face of it, the order is not sustainable****. There is a logical fallacy in using the word "all" with the negative verb, and saying that all the conditions are not satisfied, leaves the position extremely vague. The order does not indicate if any of the conditions has or has not been satisfied and if any of the conditions has not been satisfied, which one it is. The order again does not give any reasons in support of its finding and certainly does not show that the Board has applied its mind to the question at issue. Reliance on behalf of the petitioner has been placed on an authority of the Supreme Court in Travancore Rayons v. Union of India, . In this authority; in paragraph 11, Shah J. (as he then was), speaking for the court, observed that:*
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> > *"Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious; when judicial power is exercised by an authority normally performing executive or administrative functions, this court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency; the court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved, in a proceeding before the High Court or this court, has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record*

reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

7. In this case, the Supreme Court was pleased to set aside the order of the Central Government passed upon revision.

8. Mr. Aiyar, counsel for the respondents, has cited a single Bench authority of this court in Dalmia Cement (Bharat) Ltd. v. Income-tax Officer, (Civil Writ Petition No. 996 of 1971 decided on 11th February, 1972), This was a case where the party had asked the Income-tax Officer for permission to change the previous year under Section 3(4) of the Income-tax Act of 1961. In repelling the contention of the petitioners, the court observed that it was not possible to accept the contention that no reasons had been given as to why the permission had been refused and, therefore, it must follow that the decision was arbitrary; the statute did not require recording of reasons by the Income-tax Officer, nor did the Act require that the reasons for refusal ought to have been communicated to the assessed ; the matter being in the discretion of the Income-tax Officer, it was not possible to accept the suggestion that the reasons why discretion had not been exercised in favor of the assessed must be put on record and the same should be communicated to the assessed. Section 3(4) of the Income-tax Act of 1961 provides that where the assessed has once exercised the option to have a particular previous year with respect to a particular source of income, then he shall not be entitled to vary the same except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose. In the absence of such consent, the assessed had no right to alter the previous year. In the context of the statutory provisions, the observations have been made by this court on which the learned counsel for the respondents has relied. They have, however, no application to the facts and circumstances of the instant case. In view of the observations of the Supreme Court extracted above, the Central Board of Revenue, in dealing with the statutory right of the petitioner to claim exemption on the grounds specified in the statutory notification, was bound to pass a speaking order and give reasons in support of their finding that the petitioner was not entitled to the exemption. The order of the Board is, therefore, liable to be quashed on this ground alone.

9. Mr. Aiyar has attempted to support the order on the ground that the Director of Inspection had, after discussion with the representatives of the petitioner, thoroughly examined the matter and the Board had adopted his report. In my opinion, the statutory authority is required to apply its own mind to the case and its examination by any other officer and mechanical acceptance of his report by the statutory authority does not satisfy the Rule of law. Again, the knowledge and, for that matter, conjectures of the petitioner in respect of the reasons, is no substitute for the formal incorporation of the reasons in the impugned order. The petitioner may be entirely mistaken in its assessment of the reasons and nobody will hear (sic) it to say what the reasons were which weighed with the statutory authorities in passing the order. See the observations in Associated Tubewells Ltd. v. R.B. Gujarmal Modi, . As pointed out by the Supreme Court in the above mentioned judgment, incorporation of the reasons is necessary to demonstrate that the authority has considered the matter according to law and that its order may be subjected to judicial review. The contention of Mr. Aiyar fails."

14. Hon'ble Bombay High Court in the case of Anusayaben A. Doshi and Others, 256 ITR 685 (Bom) reiterated this proposition of non-speaking order being violative of principle of natural justice, and therefore, being unsustainable in law. Hon'ble High Court held that order or the judgment should be self-explanatory giving reasons that are essential element of administration of justice. Reasons , it held, was as an indispensable part of a sound system of judicial review, and the reasoned decision is not only for the purpose of showing that the citizen is receiving justice but also a valid discipline for the authority itself. Hon'ble High Court's finding in this regard are as under:

> "*5. It is needless to emphasise that the order or judgment should be self-explanatory. It should not keep the higher court guessing for reasons. Reasons provide a live-link between conclusion and evidence. That vital link is the safeguard against arbitrariness, passion and prejudice. Reason is a manifestation of the mind of the court or Tribunal. It is a tool for judging the validity of the order. It gives an opportunity to the higher court to see whether the impugned order is based on reasons and that the reasons are based on adequate legal and relevant material. Giving reasons is an essential element of administration of justice. A right to reasons is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the authority itself. Therefore, stating of reasons is one of the essentials of justice. In this case, the appellate authority being the final authority on the facts was obliged to appreciate the evidence, consider the reasoning of the primary or lower authority and assign its own reasons as to why it disagreed with the reasons and findings of the primary or lower authority. Unless adequate reasons are given, merely because it is an appellate authority it cannot brush aside the reasoning or finding recorded by the lower authority."*

15. Having noted the legal position in this regard that the order passed without assigning any reasons i.e. non-speaking order, is violative of principles of natural justice, and not sustainable in law, We hold the present non speaking order passed by the AO as well as CIT(A) as not sustainable in law. And therefore without going into the

merits of the case we set aside the order passed by the AO, and the consequent additions made in the case of the assessee are directed to be deleted.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 6th November, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 6/11/2024