आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.877/Mds/2011**
निर्धारण वर्ष / Assessment Year : 2006-07

M/s SICGIL India Ltd., 84, Anna Salai, Chennai - 600 002. PAN : AAACS 3767 A (अपीलार्थी/Appellant)	v.	The Assistant Commissioner of Income Tax, Company Circle VI(1), Chennai - 600 034. (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 06.10.2015
घोषणा की तारीख/Date of Pronouncement : 18.12.2015

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax, Chennai-III, Chennai, dated 21.03.2011 and pertains to assessment year 2006-07.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee claimed deduction under Section 80-IB of the Income-tax Act, 1961 (in short 'the Act') in respect of rental charges and cylinder service charges. The assessee has also claimed deduction under Section 80-IB of the Act in respect of cylinder transportation charges to the extent of ₹2,08,43,604/-. Referring to the Sales Tax and Central Excise Duty, the Ld.counsel submitted that the Commissioner directed the Assessing Officer to examine the issue in the light of the judgment of Apex Court in Liberty India Ltd. v. CIT (317 ITR 218). According to the Ld. counsel, the Assessing Officer allowed the claim of the assessee after considering the entire facts of the case. In fact, a questionnaire was issued to the assessee and the assessee has filed all the details called for by the Assessing Officer. For the assessment year 2010-11, an identical issue came before this Tribunal in the assessee's own case, in respect of cylinder transport charges. This Tribunal found that the Central Excise Department has taken the cylinder transport charges as part of the sale consideration for sale of liquid carbon dioxide. Therefore, when the one wing of Central Government considers the transport of carbon dioxide as part of sale consideration, there is no reason to exclude the same while

computing taxable income under the Income-tax Act. The Tribunal found that the delivery charges of carbon dioxide should be treated as having direct nexus with industrial undertaking of the assessee, therefore, it is an integral part of turnover and the same is eligible for deduction under Section 80-IB of the Act. In view of this decision of the Tribunal, according to the Ld. counsel, the Administrative Commissioner is not correct in directing the Assessing Officer to exclude the cylinder transport charges of ₹2,08,43,604/- from the eligible profit for the purpose of computation of deduction under Section 80-IB of the Act.

3. On a query from the Bench, when the Assessing Officer has not considered any of the claim and the application of mind does not reflect in the order of the Assessing Officer, whether the order of the Assessing Officer is erroneous and prejudicial to the interests of Revenue? The Ld.counsel for the assessee submitted that it is not necessary for the Assessing Officer to discuss each and everything in the assessment order. When the Assessing Officer considered all the materials filed by the assessee and then allowed the claim of the assessee consciously, it is not necessary to discuss the matter in the assessment order. The Ld.counsel placed his reliance on the

judgment of Bombay High Court in CIT v. Design & Automation Engineers (Bombay) (P) Ltd. (2010) 323 ITR 632 and also on the judgments of Delhi High Court in CIT v Sunbeam Auto Ltd. (2011) 332 ITR 167 and CIT v. Anil Kuma Sharma (2011) 335 ITR 83. The Ld.counsel has also placed reliance on the judgment of Delhi High Court in CIT v. Honda Siel Power Products Ltd. (2011) 333 ITR 547.

4. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the Assessing Officer has not considered whether the rental charges, cylinder service charges and cylinder transport charges are derived from industrial undertaking. Referring to Section 80-IB of the Act, the Ld. D.R. pointed out that the assessee is eligible for deduction under Section 80-IB of the Act in respect of income derived from industrial undertaking. Therefore, the Commissioner found that in view of the judgments of Apex Court in Cambay Electric Supply Industries Ltd. (113 ITR 84) and CIT v. Sterling Foods (237 ITR 579), the transport charges, rental charges and service charges are not derived from industrial undertaking. According to the Ld. D.R., deduction under Section 80-IB of the Act can be allowed only in respect of income derived from industrial undertaking and not from income attributable

to business of the assessee. Since the Assessing Officer has not considered in the assessment order and the application of mind does not reflect in the assessment order, the Commissioner found that the order of the Assessing Officer is not only erroneous but also prejudicial to the interests of Revenue. Hence, according to the Ld. D.R., the Commissioner has rightly refused the order of the Assessing Officer in exercise of his jurisdiction under Section 263 of the Act.

5. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the order of the Assessing Officer. There is no reference or discussion about the deduction claimed by the assessee under Section 80-IB of the Act. The question arises for consideration is when the Assessing Officer has not discussed anything in the assessment order, can we presume that the Assessing Officer considered all the material available on record and allowed the claim of the assessee? Admittedly, the proceeding before the Assessing Officer is a judicial proceeding under Section 131 of the Act. The reason for conclusion reached in the judicial proceeding has to be recorded in the order itself. It is well settled

principle of law whether it is an administrative order or judicial order, the reason for the conclusion / decision has to be recorded in the order itself so as to enable the appellate / revisional authority to appreciate the reason for taking a particular decision in the proceeding. In this case, admittedly, the assessment order is the subject matter of appeal before the Commissioner and it is also subject to revision under Section 263 of the Act before the Administrative Commissioner. Therefore, the Assessing Officer is expected to record his reason for the conclusion reached in the assessment order. In the case before us, there is no reference about the clam of deduction under Section 80-IB of the Act. The assessee appears to have claimed in the return of income and the Assessing Officer without any verification or discussion in the assessment order, allowed the claim of the assessee. It is well settled principle of law that the reason in the order is a live link between the mind of the decision maker and his order. In fact, the Punjab & Haryana High Court considered this issue and after referring to the judgment of the Constitutional Bench of the Apex Court in S.N.Mukherjee v. Union of India, AIR 1990 SC 1984, has observed as follows:

" In S.N.Mukherjee v. Union of India, AIR 1990 SC 1984, a Constitution Bench of the Supreme Court discussed the development of law on this subject in India, Australia, Canada, England and the United States of America and after making reference to a large number of judicial precedents, their Lordships culled out the following propositions (page 1995) :

> "The decisions of this court referred to above indicate that with regard to the requirement to record reasons the approach of this court is more in line with that of the American Courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this court under article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under article 227 of the Constitution and that the reasons, if recorded, would enable this court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.
>
> Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it

> excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

In Testeels Ltd. v. N. M. Desai [1970] 37 FJR 7; AIR 1970 Guj 1, a Full Bench of the Gujarat High Court has made an extremely lucid enunciation of law on the subject and we can do no better than to extract some of the observations made in that decision. The same are (headnote of AIR 1970 (Guj):

> "The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.

> Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under article 226 and the Supreme Court under article 32 of the Constitution. These courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction."
>
> If the order passed by the Tribunal is scrutinised in the light of the aforementioned proposition of law, we do not find any difficulty in setting aside the same on the ground of violation of the rules of natural justice. The flowery language used by the Tribunal to justify its acceptance of the respondent's plea that he did not know the law does not warrant our affirmation. In our opinion, the Tribunal was duty bound to record tangible and cogent reasons for upsetting well reasoned orders passed by the Assessing Officer and the Commissioner of Income-tax (Appeals). It should have directed its attention to the language of sections 271D and 271E of the Act in conjunction with other provisions of the same family and then decided by a reasoned order whether the respondent had been able to make out a case for deleting the penalty. The order passed by the Tribunal should have clearly reflected the application of mind by the learned members."

In view of the above judgment of Apex Court, this Tribunal is of the considered opinion that the judgments of Delhi High Court (supra) and Bombay High Court (supra) referred by the Ld.counsel for the assessee may not be applicable to the facts of the case. In other

words, the Assessing Officer is bound to record reasons one way or other for the conclusion reached in the assessment order. The Assessing Officer is expected to discuss the claim of the assessee under Section 80-IB of the Act and record his own reason either for allowing or disallowing the claim of the assessee. Since this exercise has not been done by the Assessing Officer, this Tribunal is of the considered opinion that the order of the Assessing Officer is not only erroneous but also prejudicial to the interests of Revenue. Therefore, this Tribunal do not find any reason to interfere with the order of the Commissioner. However, the Assessing Officer, while passing consequential order, shall consider the decision of this Tribunal in the assessee's own case for assessment year 2010-11 in I.T.A. No.1174/Mds/2015 dated 29.09.2015 and other judgments, if any, brought to the notice of the Assessing Officer by the assessee in the course of proceeding. In other words, the Assessing Officer shall independently examine the issue afresh in accordance with law and thereafter decide the same after giving reasonable opportunity to the assessee.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced on 18th December, 2015 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 18th December, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai-III, Chennai-34
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.