आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.1808/Mds/2015**
निर्धारण वर्ष **/** Assessment Year : 2010-11

M/s Peacock Apparels (P) Ltd., Plot No.2, Meenakshi Nagar, GST Road, Pasumalai, Madurai – 625 004.	v.	The Deputy Commissioner of Income Tax, Circle I(1), Madurai.
PAN : AACCP 2308 P (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Srinivasan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 30.03.2016
घोषणा की तारीख/Date of Pronouncement : 13.04.2016

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 -1, Madurai, dated 30.03.2015, passed under Section 263 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11.

2. Shri R. Srinivasan, the Ld.counsel for the assessee, submitted that the Assessing Officer allowed the claim of the assessee under Section 10B of the Act. However, the Commissioner found that the assessee is not eligible for deduction under Section 10B of the Act. Accordingly, he revised the order of the Assessing Officer and directed the Assessing Officer to redo the assessment after giving reasonable opportunity to the assessee. On a query from the Bench whether any discussion was made by the Assessing Officer in the assessment order, the Ld.counsel has fairly submitted that no such discussion was made. However, according to the Ld. counsel, such a discussion is not necessary in the assessment order when the Assessing Officer has accepted the claim of the assessee. According to the Ld. counsel, the discussion is required in the assessment order only when the Assessing Officer disallows the claim of the assessee. According to the Ld. counsel, it is the practice of the Department not to discuss anything in the assessment order when the assessee's claim was accepted. Placing reliance on the judgment of Madras High Court in the assessee's own case in W.P. (MD) Nos.2950 to 2952 of 2015 dated 13.10.2015, the Ld.counsel submitted that the assessee is eligible for exemption under Section 10B of the Act.

3. We have heard Sh. Pathlavath Peerya, the Ld. Departmental Representative also. Admittedly, the Assessing Officer has not discussed anything about the claim of deduction under Section 10B of the Act. The assessment order is very silent about the claim of the assessee. It is not in dispute that the proceeding before the Assessing Officer is a judicial proceeding. It is a settled principle of law that whether it is administrative order or judicial order, the reason for conclusion should be in the order itself. The order of the Assessing Officer is subjected to revision by the Commissioner and appeal before this Tribunal. Further appeal is also possible before the High Court or Supreme Court. Therefore, it is all the more important for the Assessing Officer to record his own reason for conclusion in the order itself. If the reason was not recorded in the assessment order for the conclusion reached therein, the revisional/ appellate authority cannot appreciate the order of the Assessing Officer. This Tribunal is of the considered opinion that the material available on record has to be examined by the Assessing Officer and record his own reason for conclusion in the assessment order. Recording of reason in the assessment order would be the live-link to the material available on record and the mind of the decision

maker. The reason recorded in the assessment order would reveal the application of mind by the concerned authority. In fact, the Punjab & Haryana High Court, after considering the judgment of 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) :
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> > "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 con sideration 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 Con stitution 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 func tions on the ground that a judge is trained to look at things objec tively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.
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> > 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 autho rity must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an admi nistrative 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 deci sions 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 rea sons 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 arbi trariness in the decision-making process.
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> 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 Con stitution. 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."

4. In view of the above, this Tribunal is of the considered opinion that there is error in the order of the Assessing Officer which is prejudicial to the interests of Revenue. Therefore, the Commissioner has rightly exercised his power under Section 263 of the Act.

5. We have carefully gone through the judgment of Madurai Bench of Madras High Court in the assessee's own case in W.P. (MD) Nos. 2950 to 2952 of 2015 dated 13.10.2015. The assessee challenged the notice issued by the Assessing Officer for reopening the assessment under Section 147 of the Act for the assessment years 2007-08 to 2009-10. The Madras High Court found that there was no tangible material warranting the Assessing Officer to reopen the assessment. Accordingly, the notice issued by the Assessing Officer under Section 148 of the Act for reopening the assessment under Section 147 of the Act was quashed. In the case before us, it is not the issue of reopening of assessment. It is an issue of exercising power under Section 263 of the Act for the failure of the

Assessing Officer to discuss the claim of deduction under Section 10B of the Act in the assessment order. The Assessing Officer allowed the claim without discussing the same in the assessment order and without making any enquiry. Therefore, this Tribunal is of the considered opinion that the judgment of Madurai Bench of Madras High Court in the assessee's own case in W.P. (MD) Nos. 2950 to 2952 of 2015 dated 13.10.2015 is not applicable to the facts of the case.

6. In view of the above discussion, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

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

Order pronounced on 13th April, 2016 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 13th April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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