
(2015) 03 GUJ CK 0095
In the Gujarat High Court
Case No : Tax Appeal No. 1120 of 2007

Commissioner of Income Tax	Vs	APPELLANT
Premkumar B. Rathi		RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Income Tax Act, 1961 — Section 133(3), 133A, 143(3), 254, 256

Citation : (2015) 281 CTR 75 : (2015) 377 ITR 447 : (2015) 232 TAXMAN 638

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant; Swati Soparkar, Advocates for the Respondent

Judgement

M.R. Shah, J—Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad "B" Bench (hereinafter referred to as the "ITAT") dated 2.2.2007 passed in ITA No. 425/AHD/2004 for AY 1999-2000, by which, the learned Tribunal has partly allowed the said appeal reducing the dis-allowance to the extent of 10% of unexplained purchases instead of 20% as disallowed by the CIT(A), the Revenue has preferred present Tax Appeal arising the following substantial question of law.

"Whether the Appellate Tribunal was right in law and on facts in substituting the order passed by the CIT(A) and directing the estimate of addition as made by the CIT(A) be further reduced to 10% of the alleged purchases?"

The facts leading to the present Tax Appeal in nutshell are as under:

"2.1 That the assessee is trader in edible oils on semi-whole sale basis. Survey proceedings under Section 133A of the Income-tax Act was carried out on 12.1.2000 in the assessee's proprietorship concern, M/s. Mohta Agency. During the course of service, it was found that assessee purchased edible oil to the tune of Rs. 2,48,28,174/- by purchase bills from 5 different parties- M/s. Keshav Distributors and others. That the statement of Manager Shri Rajesh Mohta was

recorded. Subsequent to survey proceedings, the said Manager was asked to produce above parties. However, he replied the aforesaid parties from whom the assessee is alleged to have purchased the edible oil are not willing to appear before the Assessing Officer and or hesitating in attending the proceedings before the Assessing Officer. That the aforesaid Manager Shri Rajesh Mohta offered additional income of Rs. 7 lakhs in AY 1999-2000 on account of inability to produce the above parties before AO in order to avoid litigation and buy peace. That the books of account came to be impounded under Section 133(3) on 5.2.2000. That during the course of assessment proceedings, the AO asked further question and assessee finally agreed to surrender total additional income of Rs. 8,50,000/- on account of failure to produce these parties and revised return was filed on 22.3.2000, offering the aforesaid additional income of Rs. 8,50,000/- for AY 1999-2000. That the assessee filed detailed reply on 26.3.2002 in the course of assessment proceedings. The AO further held that the assessee failed to discharge its onus of proving genuineness of the aforesaid purchases observing in para 10 as under:

"10. It is pertinent to mention here the findings given by the honorable ITAT in the case of Vijay Proteins Ltd. v. ACIT in ITA No. 5989/AHD/1994, dated 18.1.1996-55 ITJ(AHD) 76. In the said case, the issue of such fictitious purchases was considered by the honorable ITAT and 25% of such fictitious purchases were disallowed and added to the income of the assessee. Keeping in view of the circumstances and the facts of the case, it will meet the end of justice if 25% of such purchases is disallowed in the instant case respectfully following the findings of the Honorable ITAT, Ahmedabad Bench. However, since the assessee has already made disclosure of Rs. 8,50,000/- A included the same in his name due to his inability to identify the suppliers and produce them, the same requires to be deducted before making addition in this regard. An amount of Rs. 53,57,040/- being 25% of the said purchases of Rs. 2,48,28,174/- as reduced by Rs. 8,50,000/- (Rs. 62,07,040/-) minus Rs. 8,50,000/- is therefore, added to the assessee's total income. Since the assessee has provided inaccurate particulars leading to concealment of income penalty and tried to evade tax willfully, proceedings u/s. 271(1)(c) of the act are being initiated separately."

2.2 Feeling aggrieved and dissatisfied with the assessment order passed by the AO making addition at 25% of the purchases i.e. Rs. 53,57,040/- being 25% of the said purchases of Rs. 2,48,28,174/- as reduced by Rs. 8,50,000/- (Rs. 62,07,040/- minus 8,50,000/-), to the assessee's total income, the assessee preferred appeal before the learned CIT(A). The learned CIT(A) called the remand report of the AO on the assessee's letter dated 26.3.2002. The AO submitted the report dated 17.11.2003. The AO remand report was furnished to the assessee to which, the assessee vide letter dated 23.12.2003 commented on the same. That by giving cogent reasons in para 3.2, learned CIT(A) partly allowed the said appeal and reduced the addition to 20% the aforesaid purchases. By reducing the addition and/or dis-allowance at 20% of such

unverifiable purchases of Rs. 2,48,28,174/- from 25% has been made by the AO, learned CIT(A) allowed the said appeal partly and confirmed the disallowance out of unverifiable purchases to the extent of Rs. 41,15,635/- as against the disallowance of Rs. 53,57,040/- made in the assessment.

2.3 Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A) confirming the dis-allowance out of unverifiable purchases to the extent of Rs. 41,15,635/- 20% of the unverifiable purchases of Rs. 2,48,28,174/- shown to have been made from the aforesaid five parties, the assessee preferred further appeal before the learned ITAT and relying upon the decision of the learned ITAT in the case of *Vijay Proteins Ltd. vs. Assistant Commissioner Of Income(1996) 58 ITD 428* , the learned ITAT has partly allowed the said appeal and further reduced the disallowance to 10% of the alleged purchases.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned ITAT in further reducing the dis-allowance to 10% of the alleged purchases, the Revenue has preferred present Tax Appeal with the aforesaid substantial question of law."

2. Shri Manish Bhatt, learned counsel appearing on behalf of the Revenue has vehemently submitted that the learned Tribunal has materially erred in restricting the dis-allowance to 10% of unexplained purchases.

2.1 It is further submitted by Shri Bhatt, learned counsel for the revenue that as such by giving the cogent reasons the learned CIT(A) restricting the disallowance to 20% of unexplained purchases and without disturbing the finding recorded by the learned CIT(A) and/or without observing anything that the learned CIT(A) has committed an error in restricting the dis-allowance to 20% of the unexplained purchases, the learned Tribunal has reduced/restricted the disallowances to 10% of the unexplained purchases without passing any further reasoned order.

2.2 It is further submitted by the Shri Manish Bhatt, learned counsel for the Revenue that the learned Tribunal has restricted to 10% of the unexplained purchase solely relying upon the decision of the Appellate Tribunal in the case of *Vijay Proteins Ltd. (supra)*. It is submitted that the learned Tribunal has materially erred in reducing/restricting the dis-allowance to 10% solely relying upon the decision in the case of *Vijay Proteins Ltd. (supra)*. It is submitted that learned Tribunal has not properly appreciated the fact that facts of *Vijay Proteins Ltd. (supra)* cannot be applied to the present case. It is submitted that as such the decision of the Appellate Tribunal in the case of *Vijay Proteins Ltd. (supra)* came to be considered by the learned CIT(A) and only thereafter and considering the distinguishing facts in the case of *Vijay Proteins Ltd. (supra)* only thereafter the learned CIT(A) reduced/restricted the dis-allowance to 20% of the unexplained purchased. It is submitted that therefore, the learned Tribunal has materially erred in mechanically applying the decision of the Appellate Tribunal in the case of *Vijay Proteins Ltd. (supra)*.

2.3 It is submitted that as such the impugned judgment and order passed by the learned ITAT restricting the dis-allowance to 10% of the unexplained purchases is absolutely a non reasoned order, which cannot be sustained. It is submitted that even if it is conceded the powers of the learned Tribunal and it is conceded in such type of cases and while considering the dis-allowance on the unexplained purchased Le. always there might be a discretion with the authority and on the basis of estimation, dis-allowance may be permissible. It is submitted that however such discretion is required to be exercised judiciously and must be supported by some cogent reasons. It is submitted that otherwise the disallowance on the unexplained purchases on the basis of such estimation without supporting the reasons would tantamount to give arbitrary exercise of power which is not permissible.

2.4 In support of his above submissions, Shri Bhatt, learned counsel for the Revenue has relied upon the following decisions.

"(1) Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, AIR 1959 SC 1238 : (1959) 37 ITR 151 .

(2) Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India (UOI) and Others, (2012) 10 JT 498 : (2012) 10 SCALE 122 : (2012) 10 SCC 734 .

(3) M/s. Real Estate Agencies Vs. Govt. of Goa and Others, AIR 2013 SC 3948 : (2012) 5 CTC 561 : (2012) 9 JT 277 : (2012) 4 RCR(Civil) 496 : (2012) 8 SCALE 581 .

(4) Director of Income Tax (Exemption) Vs. Shia Dawoodi Bohra Jamat

(5) Rameshchandra M. Luthra Vs. Assistant Commissioner of Income Tax, (2002) 257 ITR 460

(6) Mercury Metals (P.) Ltd. Vs. Assistant Commissioner of Income Tax, (2002) 257 ITR 297 .

(7) Rajesh Babubhai Damania Vs. Commissioner of Income Tax, (2001) 251 ITR 541 : (2002) 122 TAXMAN 614 .

(8) Mangalore Ganesh Beedi Works Vs. The Commissioner of Income Tax, Mysore and Another, (2005) 4 CompLJ 29 : (2005) 193 CTR 590 : (2005) 273 ITR 56 : (2005) 2 JT 442 : (2005) 2 SCC 329 : (2005) 1 SCR 882 .

(9). Gautam Harilal Gotecha Vs. DCIT, (2006) 200 CTR 139 : (2006) 281 ITR 283

(10) SJ and SP Family Trust Vs. Dy. Commissioner of Income Tax (Asst.), (2005) 198 CTR 255 : (2005) 277 ITR 557 : (2006) 152 TAXMAN 234

(11) CIT v. Surat Beverages Ltd. [2013] 219 Taxman 39 : 37 taxmann.com 197 (Guj.) ."

2.5 Making above submissions and relying upon the above decisions, it is

requested to allow the present Tax Appeal and quash and set aside the impugned judgment and order passed by the learned ITAT and to restore the order passed by the learned CIT(A) by answering the substantial question of law raised in the present Tax Appeal in affirmative and in favour of the Revenue and against the assessee.

3. Shri S.N. Soparkar, learned Senior Advocate has appeared on behalf of the assessee. He has submitted that there cannot be any dispute that while exercising the appellate powers by the learned IT AT, the Tribunal is bound to consider the legality and validity of the order passed by the learned CIT(A) and has to give elaborate reasons why the Tribunal is not in agreement with the view taken by the learned CIT(A) and that the learned Tribunal is bound to give reasons and is required to pass a speaking order on the issue involved in the matter and in rejection and/or addition even on the basis of estimation permitted must reflect the due application of mind. Therefore, as such to the aforesaid extent, Shri Soparkar, learned Senior Advocate for the assessee is in agreement with the submissions made by Shri Bhatt, learned counsel for the revenue and the decisions upon which the reliance has been placed on behalf of revenue.

3.1 However, has submitted that in the facts and circumstances of the case, the impugned judgment and order passed by the learned ITAT reducing/restricting the dis-allowance to 10% of the unexplained purchase may not be interfered with by this Court. He has submitted it is true that the learned ITAT while reducing/restricting the dis-allowance to 10% of the unexplained purchase has solely relied upon the decision of the Appellate Tribunal in the case of Vijay Proteins Ltd. (supra) and no independent reasonings have been assigned by the learned Tribunal on the order passed by the learned CIT(A) and how the decision of the learned CIT(A) can be said to be erroneous. Shri Soparkar, learned Senior Advocate for the assessee, however has requested to consider the facts emerging from the record and to consider the dis-allowance on the unexplained purchase accordingly. Shri Soparkar, learned Senior advocate for the assessee has vehemently submitted that in the present case it has come on record that GP disclosed at the rate of 1.11% by the assessee was found to satisfactory as compared to AY 2000-01 where the GP was of 0.98% and department by order under Section 143(3) of the Act accepted the said GP. It is submitted that therefore, in the aforesaid peculiar facts and circumstances of the case, learned Tribunal has not committed any error in sustaining the addition to the extent of 10%. In support of his above submissions, Shri Soparkar, learned Senior Advocate for the assessee has relied upon the decision of the Division Bench of this Court in the case of Commissioner of Income Tax Vs. Simit P. Sheth, (2013) 356 ITR 451 . Therefore, Shri Soparkar, learned Senior Advocate for the assessee has requested to consider the aforesaid facts emerging from the record which is not disputed by the revenue and to consider the impugned judgment and order passed by the learned Tribunal accordingly instead of remanding the matter to the learned Tribunal.

4. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that AO restricted the dis-allowance to 25% of the unexplained purchases made from 5 different parties which were not produced before the AO though ample opportunity was given to the assessee. That the learned CIT(A) on appeal restricted the dis-allowance to 20% of the unexplained purchase by a speaking and reasoned order and even distinguishing the decision of the Appellate Tribunal in the case of Vijay Proteins Ltd. (supra). Therefore, the learned ITAT was required to consider the legality and validity of the order passed by the learned CIT(A) restricting the disallowance to the extent of 20% of the unexplained purchase. That by impugned judgment and order, learned ITAT has mechanically following the decision of Coordinate Bench/Appellate Tribunal in the case of Vijay Proteins Ltd. (supra) had restricted the disallowance to the extent of 10% of unexplained purchase and without observing anything as to how the learned CIT(A) has committed an error in confirming the disallowance to the extent of 20% of the unexplained purchase. It also appears that learned ITAT has not made any observations how the decision in the case of Vijay Proteins Ltd. (supra) would be applicable to the facts of the case on hand. At this juncture, it is required to be noted that as such the learned CIT(A) did consider the decision of the Appellate Tribunal in the case of Vijay Proteins Ltd. (supra) and had observed that on facts the decision in the case of Vijay Proteins Ltd. (supra) shall not be applicable. From the impugned judgment and order passed by the learned ITAT, it also appears that no reasons whatsoever have been assigned by the learned ITAT restricting the dis-allowance to the extent 10% of the unexplained purchases. Thus, the impugned judgment and order passed by the learned ITAT restricting the disallowance to the extent of 10% of unexplained purchase can said to be non-speaking and unreasoned order. At this stage, it is required to be noted that as such the learned ITAT was exercising the appellate jurisdiction or considering legality and validity of the order passed by the learned CIT(A).

5. In the case of Omar Salay Mohamed Sait (supra) as far as back in the year 1959, the Hon^{ble} Supreme Court had an occasion to consider the judgment of the Tribunal - Appellate Tribunal. In the aforesaid decision, the Hon^{ble} Supreme Court has specifically observed and held as under:

"We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were was the reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no

account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court."

5.1 In the case of Ramesh Chandra M. Luthra (supra) the Division Bench has observed that it is the duty of the Tribunal to consider all facts and give reasons for its decision. Relying upon the decision of the Hon^{ble} Supreme Court in the case of Omar Salay Mohamed Sait (supra), in the said decision the Division Bench has further observed and held that while deciding the appeal it is necessary, that every fact for and against the assessee must have been considered with due care by the Tribunal and it must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what was reached on the evidence on record before it. It is further observed in the said decision that it is incumbent on the Tribunal before upsetting the order of Commissioner of Income-tax (Appeal) to consider the reasons given by that authority for its decision.

5.2 In the case of Mercury Metals (P.) Ltd. (supra), the Division Bench of this Court quashed and set aside the order passed by the learned Appellate Tribunal and remanded the matter to the learned Tribunal for reconsideration on the ground that it had committed an error in exercise of its jurisdiction by not drawing its attention to the reasoning given by the Commissioner of Income-tax against whose order the appeal was preferred by the revenue for its consideration.

5.3 In the case of Rajesh Babubhai Damania (supra), the Division Bench has observed that it is the duty of the Tribunal to ascertain the reasons given by the Commissioner of Income-tax (Appeals) in whose order the order of the Assessing Officer had merged.

5.4 In the case of Gautam Harilal Gotecha (supra) the Division Bench of this Court has observed and held that the Appellate Tribunal is the final fact finding body in the hierarchy of the appellate jurisdiction under the Act and its order is supposed to reflect not only the facts and contentions of the rival parties before it, but the issues which arise for its consideration and the reasons for deciding the issues. In the said decision, non-reasoned and non-speaking, incoherent and vague order by the Tribunal is considered to be a frivolous order. In the said decision, even the Division Bench of this Court had shown in its strong disapproval of passing such order by the learned Appellate Tribunal. In the said decision, the Division Bench had also observed that Court can only hope that the Tribunal applies its mind and take care in future to ensure that the approach of the Tribunal undergoes a change and it may regain its past glory. While remanding learned Tribunal to apply its mind the Division Bench was constrained to observe as under:

"This Court has been constrained to remind the Tribunal of its duties time and again, but one can only lament that the Tribunal, it appears, is not amenable to constructive suggestions. The Tribunal fails to appreciate the basic fact that by making such slipshod orders, it only generates unwarranted litigation, apart from putting the parties to unwarranted hardship, harassment and cost for no fault of theirs."

5.5 In the case of S.J & S.P Family Trust (supra) the Division Bench again emphasised the duty of the Appellate Tribunal to give reasons for its decision. In the said decision, it is once again observed that the procedure required to be adopted by the Tribunal so as to ensure that the order is an appealable order, must be one which reflects not only its conclusion, but the decision making process also. It is further observed that the reasons however brief are the soul and backbone of an order and in the absence of such reasons, which must be reflected on a reading of the order, it is not possible to state as to whether the Tribunal was aware as to what the controversy was before it and what were the factors pro and con in relation to the said issue and the reasons which ultimately weighed with the Tribunal for arriving at a decision.

5.6 In the case of Shiv Dawoodi Bohra Jamat (supra) the Division Bench of this Court again considered the judgment of the Tribunal and remanded the appeal to the Tribunal by observing that the Tribunal should give reasons for its decisions. Mere mention of Supreme Court or High Court cases without specifying how they are applicable to the case is not sufficient. In the said decision, it is again reiterated and emphasized that the Tribunal is the final fact finding authority, hence the order of the Tribunal should reflect findings of fact as well as the reasons for arriving at its conclusion on the basis of the findings recorded by it.

5.7 In the case of Surat Beverages Ltd. (supra), once again the Division Bench of this Court reiterated and emphasized that the order passed by the learned Appellate Tribunal must be a reasoned and speaking order on the issue involved in the matter. In the said decision, the Division Bench also noted that while taking up such appeal, we come across similar non speaking and non reasoned orders passed by the learned ITAT and passing order on estimate basis by deleting and/or making addition by observing that "to meet with the ends of justice". In para 5, the Division Bench has observed and held as under:

"[5.0] While taking up tax appeals, we have come across similar non-speaking and non-reasoned orders passed by the ITAT and passing the order on estimate basis by deleting and/or making addition by observing that to meet with the ends of justice. It cannot be disputed that ITAT, while deciding the appeals, is required to pass the order judiciously and it should reflect that the Tribunal has applied the mind on a particular issue. ITAT is a judicial authority and it should exercise the powers under section 254 of the Act and as per sub-section (4) of section 254 save as provided in section 256 or section 260A, orders passed by the appellate tribunal on appeal shall be final. Therefore, a great care should be taken by the ITAT while exercising the powers under section 254 of the Act and

while deciding the appeals in exercise of powers under section 254 of the Act. It is true that sub-section (1) of section 254 provides that the appellate tribunal may pass such orders as it thinks fit, but that does not mean that the tribunal is not required to assign any reasons and/or the Tribunal is not required to pass a speaking order. In the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, AIR 2012 SC 1339 : (2012) 3 SCALE 303 : (2012) 4 SCC 407 : (2012) 2 SLJ 353 : (2012) AIRSCW 1877 : (2012) 2 Supreme 506 , the Hon"ble Supreme Court had an occasion to consider the rationale behind the requirement of recording reasons in order. In the said decision, it is observed and held by the Hon"ble Supreme Court that requirement of recording reasons is one of the principles of natural justice. It is further observed and held by the Hon"ble Supreme Court that right to reasons is an indispensable part of sound judicial system. In the said decision the Hon"ble Supreme Court in paras 44 and 46 has observed as under

44. This Court while deciding the issue in Sant Lal Gupta and Ors. v. Modern Cooperative Group Housing Society Ltd., placing reliance on its various earlier judgments held as under:

27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

3. ...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

46. The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the

power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

In the case of Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India (UOI) and Others, (2012) 10 JT 498 : (2012) 10 SCALE 122 : (2012) 10 SCC 734 , in para 22 , the Hon"ble Supreme Court has held as under:

22. Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor are brief orders always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration.

A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves.

In the case of M/s. Real Estate Agencies Vs. Govt. of Goa and Others, AIR 2013 SC 3948 : (2012) 5 CTC 561 : (2012) 9 JT 277 : (2012) 4 RCR(Civil) 496 : (2012) 8 SCALE 581 while emphasizing the necessity of giving reasons by the Courts/Tribunals/Judiciary, it is held that, manner of reaching a decision and reasons for reaching such decisions are sacrosanct to judicial process. While emphasizing the need to pass a reasoned order, the Hon"ble Supreme Court in the case of Certified Area Committee v. Additional Director, Consolidation reported in [2002] 10 SCC 87, has held as under:

The reasons are the flesh and blood of Judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the Superior Court. Considering the aforesaid law laid down by the Hon"ble Supreme Court and the requirement of passing a reasoned and speaking order, considering the facts of the case on hand and the impugned common judgment and order passed by the IT AT, the impugned judgment and order cannot be sustained. No reasons at all have been assigned by the learned Tribunal while dismissing the appeal preferred by the Revenue and partly allowing the appeal preferred by the assessee and sustaining the addition of Rs. 30 lac. The impugned order passed by the learned Tribunal is absolutely on estimate basis without assigning any reasons and as such no reasons have been assigned at all while dismissing the appeal preferred by the Revenue.

As stated hereinabove both, the Revenue as well as the assessee are aggrieved by the impugned judgment and order and a common grievance is made that the impugned order passed by the learned ITAT is a non-speaking and non-reasoned order and it is prayed to remand the matter to the ITAT for its fresh decision."

5.8 In the case of Mangalore Ganesh Beedi Works (supra) the Hon''ble Supreme Court has observed and held that in an appeal to the High Court, even while affirming the order, the High Court will have to deal with point urged before it and the reasons for affirmation are required to be given though not elaborately. In the said decision, it is observed by the Hon''ble Supreme Court that recording of reason is a part of fair procedure. The reasons are the harbinger between the mind of the maker of the decision in the controversy and the decision on conclusion arrived at. They substitute subjectivity with objectivity. Failure to give reasons amounts to denial of justice.

6. Despite the above decisions of the Hon''ble Supreme Court as well as this Court drawing the attention of the learned Appellate Tribunal that it is the duty to pass reasoned and speaking order on the issue; to consider the order passed by the learned CIT(A) and the reasoning given by the learned CIT against which the appeal is preferred before it and even while making estimate either on deletion and/or addition to pass speaking and reasoned order in respect of such estimation either on deletion and/or addition, it appears that message has not reached to the Appellate Tribunal. Despite the above decisions and even the hope and trust by the Division Bench that in future the Appellate Tribunal to take care and pass speaking and reasoned order, the Appellate Tribunal had continued to pass such non speaking and non reasoned order. The Appellate Tribunal is bound to obey the decision of the Hon''ble Supreme Court as well as High Court. They cannot ignore the observations and the decisions of the Hon''ble Supreme Court as well as this Court. Despite the specific observations and the directions of the Hon''ble Supreme Court as well as this Court in various decisions which are referred to and reproduced herein above, the Appellate Tribunal has continued to pass non-speaking, unreasoned order and are passing non speaking order on estimate without supportive reasons and the grounds which as such would tantamount to disobedience to the decisions of the Hon''ble Supreme Court as well as High Court and the same cannot be permitted to be continued and same deserves serious consideration. Even in the case of estimation, though permissible, if the learned Commissioner of Income -tax has passed an order by giving cogent reasons, the Tribunal on an appeal either by the Revenue and/or assessee is required to apply its mind and consider the reasons given by the learned CIT(A) and is required opine where the learned CIT(A) had committed an error and whether the order passed by the learned CIT(A) is required to be to be interfered with or not. Even if the learned Tribunal is having the discretion to pass any order of deletion and/or allowances on estimation, such discretion is required to be exercised judiciously and it must be supported by cogent reasons and it must reflect the application of mind by the learned Appellate Tribunal on the issue. Therefore, once again the observations made by the Hon''ble Supreme Court as well as this Court in catena of decisions referred to herein above are reiterated and all the Income Tax Appellate Tribunal are hereby directed to consider the observations made in catena of decisions of the Hon''ble Supreme Court as well as Division Bench of this Court referred to herein above as well as

observations made in the present order while deciding the appeals against the order passed by the learned Commissioner of Income-tax (Appeals), in its true spirit, failing which the matter shall be viewed very seriously and it would tantamount to disobedience of the order/orders passed by the Higher Courts/ Forum. This Court is constrained to make the above observations as despite specific observations made by the Division Bench of this Court that this Court is constrained to remind the Tribunal to its duty time and again, but one can only lament that the Tribunal, it appears, is not amenable to constructive suggestions and the Tribunal fails to appreciate the basic fact that by making such slipshod orders, it only generates unwarranted litigation, apart from putting the parties to unwarranted hardship, harassment and cost for no fault of their and despite the reminder to the Appellate Tribunal with a hope that the Tribunal applies its mind and take care in future to ensure that the approach of the Tribunal undergoes a change and it may regain its past glory, the things have not much improved and the Appellate Tribunals have continued to pass such non speaking and non reasoned order and has continued to pass orders on estimation without any supporting reasons. Now, coming to the facts of the case on hand, considering the impugned order passed by the learned Tribunal, it appears that it is non speaking and non reasoned order and as such no reasons have assigned while restricting the disallowance to 10% of the unexplained purchases. Therefore, as such the matter is required to be remanded. However, instead of remanding the matter to the learned ITAT considering the request made by the learned counsel for the respective parties, on merits we ourselves have considered the matter on merits and on the basis of admitted facts. It has come on record and it is not disputed by the Revenue that in the case of assessee GP rate was higher compared to the subsequent assessment year. The GP disclosed at the rate of 1.11% by the assessee is satisfactory as compared to AY 2000-01 where the GP was of 0.98%. Under the circumstance, in the peculiar facts and circumstance and considering the decision of the Division Bench of this Court in the case of Simit P. Sheth (Supra) where this Court confirmed the final order passed by the learned ITAT restricting the disallowance to 10% of the unexplained purchases, though not approving the method and manner in which the learned Tribunal has decided the appeal, however on merits and in the peculiar facts and circumstances narrated herein above, we confirm the ultimate final order passing by the ITAT. Consequently, present Tax Appeal is dismissed. Registry is directed to send the copy of this order to President, ITAT, Ahmedabad and the Vice President, ITAT, Ahmedabad Zone so as to enable to circulate this order to the learned Members of the Appellate Tribunal so that in future the learned Appellate Tribunal may take care in future while deciding the appeals against the order/ orders passed by the learned Commissioner of Income-tax (Appeal), we again hope and trust that while deciding the appeal and in future the learned Appellate Tribunal may consider the observations made by the Hon''ble Supreme Court as well as this Court in catena of decisions referred to herein above as well as the observations made in the present order.