(2015) 08 P&H CK 0283

In the Punjab And Haryana At Chandigarh

Case No : I.T.A. No. 233 of 2014 (OandM)

Kewal Chaudhary APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(2), 260A

Citation : (2015) 378 ITR 52

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Ravish Sood, Advocate, for the Appellant; Vivek Sethi, Advocate, for the Respondent

Judgement

Ajay Kumar Mittal, J.—The assessee has preferred this appeal under section 260A of the Income-tax Act, 1961 (in short, "the Act"), against the order dated March 20, 2014, annexure A. 7 passed by the Income-tax appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in I.T.A. No. 283 (ASR)/2012 for the assessment year 2007-08, claiming the following substantial questions of law:

"(i) Whether the Tribunal is right in law and facts of the case in dismissing the appeal by way of a non-speaking order without recording any independent finding or giving any reasoning, specifically in the light of the settled position of law so laid down by the hon''ble Supreme Court in the case of Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, which statutorily requires recording of reasons by a quasi-judicial authority in support of its conclusions?

(ii) Whether the Tribunal is right in law and facts of the case in sustaining the disallowance of interest on borrowed capital of Rs. 3,43,673?

(iii) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that as the profits amounting to Rs. 1,23,87,990 earned by the appellant from his business during the year were sufficient to cover the impugned advances of Rs. 28,63,942, therefore, in the light of the settled position of law laid down by the hon''ble Supreme Court in the case of Munjal Sales Corporation Vs. Commissioner of Income Tax, Ludhiana and Another, , no disallowance of interest on borrowed capital was liable to be made?

(iv) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that in the light of substantial interest-free funds and accumulated amounts in the capital account available with the appellant, in the absence of any nexus between the interest-free advances given and the interest bearing funds borrowed by the appellant, no disallowance of interest on borrowed capital was liable to be made?

(v) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that even otherwise as the amounts had been advanced by the appellant at different points of time during the year, therefore, the disallowance of interest on borrowed capital of Rs. 3,43,673 as regards the Entire amount of advances aggregating to Rs. 28,63,942 (supra), for the whole of the year (i.e., for a period of 12 months) could not ''be sustained?"

A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a sole proprietor of a concern engaged in the business of manufacturing of batteries under the name and style of M/s. Action Batteries at Jalandhar. He filed his return of income declaring a net taxable income of Rs. 1,24,44,951 on October 31, 2007, which was processed as such under section 143(1) of the Act. The case was taken lip for scrutiny assessment under section 143(2) of the Act. The Assessing Officer, vide order dated May 8, 2009, annexure A.5 disallowed interest on borrowed, capital at the rate of 12 percent, per annum on the amount of the interest-free, advances, of Rs. 28,63,942 for the whole of the year and made a disallowance of Rs. 3,43,673 and assessed the income of the appellant at Rs. 1,34,48,302 Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) ("the CIT(A)"). Vide order dated April 25, 2012, annexure A.6, the Commissioner of Income-tax (Appeals) partly allowed the appeal but sustained the disallowance of Rs. 3,43,673 made by the Assessing Officer towards interest on borrowed capital. The assessee went in appeal before the Tribunal. Vide order dated March 20, 2014, annexure A. 7, the Tribunal dismissed the appeal by merely referring to and reproducing the observations recorded by the Assessing Officer and the Commissioner of Income-tax (Appeals) and without recording any independent finding or reasoning. Hence, the instant appeal by the assessee.

2. We have heard learned counsel for the parties.

3. Learned counsel for the appellant submitted that the Tribunal has quoted the order of the Commissioner of Income-tax (Appeals) as it is without giving any reasons except that in paragraph 7 of its order, it was stated that "we do not find any infirmity in the order of the Commissioner of Income-tax (Appeals)".

4. Learned counsel for the assessee-appellant to substantiate his plea, referred to paragraph 3.4 of the Commissioner of Income-tax (Appeals)''s order which has been quoted ditto in paragraph 6.3 by the Tribunal without any change in coma. Further, illustrations were given by him as under:

5. The hon''ble apex court in Kranti Associates Pvt. Ltd.''s case (supra) dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi-judicial or judicial, had laid down as under:

"51. Summarising the above discussion, this court holds:

(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 Ruiz Torija v. Spain [1994] 19 EHRR 553 and Anya v. University of Oxford, , 2001 EWCA Civ 405 , wherein the court referred to Article 6 of the 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''."

6. In the present case, we find that the learned counsel for the assessee, with reference to the illustrations as reproduced in the earlier part, had been able to demonstrate that the Tribunal had verbatim copied the order of the Commissioner of Income-tax (Appeals) at different places without even difference of punctuation by showing it to be an order passed by it. Thus, it cannot be said that there has been independent application of mind as the Tribunal being a final fact finding authority was required to discuss the evidence before arriving at the conclusions. The order passed by the Tribunal is violative of the principles of natural justice and does not satisfy the requirements of a reasoned order. Consequently, the substantial questions of law are answered accordingly. The impugned order passed by the Tribunal dated March 20, 2014, annexure A. 7 is set aside and the matter is remanded back to the Tribunal to decide it afresh after hearing learned counsel for the parties in accordance with law. Accordingly, the appeal stands disposed of.