

Need for speaking orders by Judicial Authorities

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Introduction:

Whether the Quasi-Judicial bodies are required to record reasons in support of their decisions. The judicial authorities including Quasi-judicial authorities must pass speaking orders otherwise the orders passed by them is not valid and legal. The necessity for quasi-judicial Tribunals to give reasons for their decision came up in several cases. Recording reasons in support of the conclusions reached by judicial authorities is a requirement for both judicial accountability and transparency. 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.

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. Judicial or even quasi-judicial opinions these days can be 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 litigant's faith in the justice delivery system.

Insistence on reason is a requirement for both judicial accountability and transparency. 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. 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.

Ground realities:

It is seen that in number of cases A.O. and CIT(A) does not pass speaking orders. They following

examples are indicative of the fact that the speaking orders are not being passed by judicial authorities including quasi-judicial authorities.

1. The appeal orders simply reproduce the conclusions/ observations of the A.O from the assessment order and thereafter written submissions of the counsel are reproduced and thereafter without recording reasons or dealing with the arguments the appeal is being dismissed by stating that the arguments are not acceptable.
2. Though the jurisdictional High court has given decision in favour of the assessee, the A.O prefers not to follow the decision on the ground that the department has not accepted the decision.
3. In respect of addition u/s 14A though the assessee relies on the decision of Gujarat high court in CIT vs. Gujarat state fertilizers and chemical ltd. 358 ITR 323. Wherein it is held that where assessee's interest free funds far exceeds investment made for earning exempt dividend income than no disallowance can be made u/s 14A of the I.T. Act 1961. The A.O as well as CITA do not discuss the judgment referred to at the time of proceedings. They do not give any reasons also for not following the jurisdictional high court decision.
4. It is further submitted that jurisdictional High Court in CIT vs. Raghuvveer Synthetics Ltd. 354 ITR 222 has held that when interest free funds available with the assessee were far greater than loan advance to sister concerns and borrowed money was not utilized for the purpose of advance to the sister concern then interest is not to be disallowed merely on account of utilization of funds for non- business purposes and when no evidence is brought on record by the dept. that borrowed money was utilized for the purpose of advance to sister concerns.
5. In respect of disallowance of interest expenditure on loan taken for acquiring controlling interest

though it is pointed out that the decision of Bombay High Court in Amrita R. Shah was not followed by their Lordships of Bombay high court in CIT vs. shrishti securities 321 ITR 498 the Learned CIT(A) makes note of the later decision but does not follow nor differentiates an cursorily dismisses the argument

6. In yet another case the learned CIT(A) refuses to deal with the argument of A.R that household expenses of Rs. 20,000 is reasonable. He takes into account household expenses of Rs. 5000 per month and differences added to total income.
7. It was claimed before CIT(A) as under “Under [point no 3(a) of circular no 2/2016 dated 29th February 2016 issued by CBDT], it has been clarified that where the assessee itself irrespective of the period of holding the listed shared and securities opts to treat them as stock in trade the income arising from the transfer of such shared/securities would be treated as its business income.”

“In my Financials, I have clearly shown the shares under Balance sheet as investment under current assets and not under Trading/Profit and Loss account as stock in trade. This again substantiates my intention to hold it as investment and not as trading item and which can only be treated as short term capital Gain and not business income as decided by learned AO.”

The assessee relied on the judgement of Hon. ITAT in the case of Mr. Manish Ajmera ITA No. 5700/Mum/2013 decided on 26.08.2016. However, dismissing the appeal the learned CIT(A) relied on CBDT circular No. 4 of 2007 Dated 15.06.2007 and surprisingly the latest circular of 29th February, 2016 as well as the decision in the case of Manish Ajmera was not referred to at all.

The above referred examples are only illustrative examples, there are number of other examples also and if details are reproduced here, this article will be too lengthy.

It is seen that when such examples are noticed and the assessee files misc. petition, they are not disposed off.

Exceptions:

It is important to note that every judicial order may not be supported by recording reasons. In court-martial cases, the Supreme Court in S.N. Mukherjee v Union of India, AIR 1990 held:

- i. They do not belong to the judicial branch of the government.
- ii. Court-martial are sui generis in nature and are dealt with differently by the constitution itself.

Thus, it is not necessary in such cases to record reasons by the authorities.

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It is submitted that there are number of decisions which lay down that all the issues as per the assessee must be dealt with by judicial authorities. Let me refer to the decision of M/s ATM Forgings, Focal Point, Jalandhar..... Appellant versus The Commissioner of Income Tax II, Jalandhar. ITA no. 598 of 2008 (O&M) Date of decision : 26.08.2013. the operative part of the decision of their lordships of Punjab and Haryana High court reads as under

“it would be apposite to refer to the order of the tribunal dated 27.02.2008 which would show that the Tribunal has in para 11 thereof noticed the contentions of the parties and accepted the appeal of the revenue without giving any cogent and convincing reasons. Therefore, the order dated 27.02.2008 does not satisfy the requirements as enunciated by the Court noticed herein above. Thus, the substantial question of law is answered in favour of the appellant-assessee and against the revenue. Accordingly, after setting aside the order of the tribunal dated 27.02.2008 which is passed in violation of the principles of natural justice as per the law laid down by the Court as mentioned above, the matter is remanded to the Tribunal to decide afresh after affording an opportunity of hearing to the parties in accordance with law. As a result, both the appeals are allowed.”

Let me now refer to another important decision of Madras High Court which has also confirmed that Judicial Authorities must pass speaking orders. The citation of the decision is as under:

Tax case (Appeal) Nos. 202 and 203 of 2012 & M.P. Nos.1 and 1 of 2013

M/s. Altius securities Trading (P) Ltd.,Appellant in T.C. (A) No. 202 of 2012

Shri C. Srikanth ,Appellant in T.C. (A) No.203 of 2012

Vs.

The Deputy Commissioner of Income Tax, Company Circle I(1)

In this case, it was held as under:

“As far as the present case is concerned, the Tribunal has not adjudicated on the issue in the light of the materials projected by the assessee in support of his case.

In similar situation, in the decision reported in (1967) 66 ITR 462 (UdhavdasKewalram V. Commissioner of Income-tax), the Apex court pointed out “the Tribunal was undoubtedly competent to disagree with the view of the Appellate Assistant Commissioner. But in proceeding to do so, the Tribunal has to act judicially, i-e, to consider all the evidence in favour of and against the assessee. An order recorded on a review of only a part of the evidence and ignoring the remaining evidence could not be regarded as conclusively determining the questions of fact raised before the Tribunal.”

In the unreported decision of this Court dated 13.2.2012 in T.C.(A)No.791 of 2004 (CIT V. GEC Alstom India Ltd.), this Court referred to the decision of the Apex Court reported in 2010 (9) Scale 199 (M/s. Kranti Associates Pvt. Ltd and another V. Sh. Masood Ahmed Khan and others) and to the observation in paragraph 51. We need not reproduce the same, except to point out that recording of reasons is meant to serve wider principles of justice and the quasi-judicial authority must record reasons in support of his conclusions and insistence on reason is a requirement for both judicial accountability and transparency, it goes without saying that the order passed by the Tribunal on the mistaken impression that the assessee had not raised any dispute on the facts found by the Assessing Officer, calls for interference by this Court.

Thus, without going into the merits of the contentions made by the assessee, this Court has no hesitation to set aside the order of the Tribunal, thereby direct the Tribunal to hear the appeal de novo and pass orders in accordance with law.”

On the issue of need for passing speaking orders by Judicial Authorities, we have landmark decision in the case of M/s. Kranti Associates Pvt. Ltd. &Anr. V/s Sh. Masood Ahmed Khan & Others WITH CIVIL APPEAL NO. _____ of 2010. The important principles laid down by their lordships of Supreme Court are as under:

“The Supreme Court in Kranti Associates Private Ltd. Case, summarized and laid down the following principles relating to ‘speaking order’.

- (i) Recording of reasons in support of a decision ensures that the decision is not a result of Caprice, whim or fancy but a decision arrived at is just and based on consideration of the relevant law;
- (ii) When the order passed is subject to appeal, then the necessity to record reasons is even greater;
- (iii) Mere giving an opportunity of hearing is not enough;
- (iv) Reasons for decision being given is required for two grounds:
 - (a) That the aggrieved person gets the opportunity to demonstrate that the reasons are erroneous; and
 - (b) Obligation to record reasons operates as an effective deterrent against possible arbitrary action. The requirement of reasons is to prevent unfairness or arbitrariness in reaching conclusions and reasoned and just conclusions will also have the appearance of justice. In the absence of reasons, it would be difficult to know whether the decision is right or wrong.
- (v) Reasons should not be a mere ‘rubber stamp reasons’ and they must disclose:
 - (a) How the mind was applied to the subject-matter for a decision (irrespective of the fact that it is purely administrative or quasi-judicial);

- (b) The link between the materials which are considered and the conclusions which are reached and it should provide a national nexus between the two;
- (vi) Requirement of 'reasons' in support of the order is as basic as the adherence to the principles of natural justice,
Principles of natural justice provides that it must be observed in proper spirit and a mere pretence of compliance would not satisfy the requirements of law.
- (vii) When an action taken deprives or restricts fundamental right, the authorities must see that justice is not only done but manifestly appears to be done as well as this mandates the disclosure of reasons for the decision
- (viii) Refusal to give reasons is an exercise of an exceptional nature and to be done sparingly and it should be fully justified by the exigencies of an uncommon situation. It should not be a mere motive to keep the reason away from judicial scrutiny
- (ix) As observed by Justice *Krishna Iyer*, 'natural justice requires reasons to be written for the conclusions reached'
- (x) Reasons being given for the principle enunciated in *Ces-santa Ratione Legisces satipism Lex* (Reason for any particular law ceases, so does the law itself) and reason is considered as the soul of the law
- (xi) Faith of the people in administrative Tribunals can be sustained only, if the Tribunal acts fairly and dispose of the matter before them by well-considered orders
- (xii) The expression 'consider' means not to act mechanically but duly apply its mind and give reasons for the decision
- (xiii) Disclosure of reasons provide for an opportunity for an objective review both by superior administrative heads and for judicial process
- (xiv) Distinction has to be made between facts which are not in dispute and disputed facts. In the former case, non-recording of reasons may

not violate the principles of natural justice but in the latter case, it would be a violation of natural justice

- (xv) Mandatory for reasons to be given in the award affecting public interest as it would facilitate the High Courts to review the validity of the award
- (xvi) Statutes like the Consumer Protection Act which is a benevolent piece of legislation intended to protect large body of consumers from exploitation and for consumer justice by summary trials must give conclusions based on reasons
- (xvii) Even in cases where the Courts act in their discretion, there is a very strong reason in favour of disclosing of reasons. There is now increasing recognition towards the duty of the Court to give reasons in U.K.
- (xviii) Unless the parties become aware of the reasons as to why one has won and the others has lost, justice will not be done
- (xix) Decisions being supported by reasons imposes discipline contributing to the decisions being considered with care, the decisions rendered encourages transparency, and helps the Courts in performing their supervisory function and judicial review proceedings and
- (xx) Considerations underlying the actions under review need a thorough scrutiny of the recorded reasons and also set up precedents for future adjudications.

The ratio in *Kranti Associates Private Ltd*, case and the guidelines serve as a reference for all administrative and judicial (including quasi-judicial authorities) to exercise their powers of decision-making judiciously- judicial application of mind and the decisions rendered may receive public appreciation.

It is suggested that the copy of the judgment may be circulated to all decision-making authorities which may ultimately contribute to transparency in all spheres of administration. It is further suggested that CBDT should come out with circular directing AO and CIT(A) to pass speaking orders with reasons.
