

Shivsagar Veg. Restaurant Vs. Asstt. Commissioner of Income-tax, 24(2) and anr.

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Court : Mumbai

Decided On : Nov-14-2008

Reported in : 2009(2)BomCR153; 2008(111)BomLR243; 2009BusLR162(Bom); 2008(232)ELT780(Bom); [2009]317ITR433(Bom); 2009[13]STR11; [2009]176TAXMAN260(Bom)

Judge : S. Radhakrishnan and ;Vijay C. Daga, JJ.

Acts : Income Tax Act, 1960; Code of Civil Procedure (CPC)

Appeal No. : Income Tax Appeal No. 144 of 2006

Appellant : Shivsagar Veg. Restaurant

Respondent : Asstt. Commissioner of Income-tax, 24(2) and anr.

Advocate for Def. : N.A. Kazi, Adv.

Advocate for Pet/Ap. : K. Shivram and ;A.R. Singh, Adv.

Disposition : Appeal allowed in favour of the assessee

Judgement :

Vijay C. Daga, J.

1. Heard the learned Counsel for the parties.

Perused appeal.

Introduction:

2. The Appellant- assessee is aggrieved by an order dated 21.10.2005 passed by the Income-tax Appellate Tribunal, Mumbai Bench 'G', Mumbai (for short 'Appellate Tribunal') in Income Tax Appeal No. 5686/M/04 in respect of the assessment year 2001-2002.

3. We admit this appeal and frame the following substantial question of law for consideration leaving all other questions open for reconsideration since the matter is being remanded to the Tribunal for the reasons recorded.

Substantial Question of Law:

Whether the impugned order passed by the Appellate Tribunal after more than four months from the date of hearing without dealing with propositions and case laws relied by the Appellant suffers from non application of mind and non consideration of material on record and therefore bad in law?

Submissions and Consideration:

4. The learned Counsel for the Appellant brought a disturbing state of affair to the notice of this Court making a serious complaint that the Appellate Tribunal had heard the appeal on 2.6.2005 and passed the order on 21.10.2005 i.e. almost after more than four months, dismissing the appeal without recording reasons, discussing propositions of law urged and case laws relied upon by the Appellant.

5. The learned Counsel appearing for the Revenue found it difficult to support the impugned order for want of reasons and did not dispute that the time has come to issue certain directions to the Appellate Tribunal laying down certain guide-lines in - 3 - the matter of early delivery of judgments once the case is closed for judgment. He also did not dispute the necessity of giving reasons in support of the judgment.

Need to Give Reasons:

6. It is needless to mention that the Appellate Authority being the final authority of facts it is incumbent upon it to appreciate the evidence, consider the reasons of the authorities below and assign its own reasons as to why he disagrees with the reasons and findings of the authority below. Merely because Tribunal happened to be an Appellate Authority it does not get right brush aside reasons or findings recorded by the First Authority or the Lower Appellate Authority. It has to examine validity of the reasons given and findings recorded. Mere recording that the conclusions arrived at did not require discussion of the case law and other propositions of law is no consideration. Merely by saying that the findings of C.I.T.(A) are just, fair and in accordance with the law can hardly tantamount to giving reasons. The absence of reasons has rendered the impugned order of the Tribunal unsustainable.

7. The reasons introduced clarity in an order. The requirement of indicating reasons has been judicially recognised as imperative by the Apex Court in the case of *Suga Ram v. State of Rajasthan* : 2006 CriLJ4643 .

8. The above view was reiterated by the Apex Court in the case of *Jawahar Lal Singh v. Naresh Singh* : 1987 CriLJ698 . The Court has also referred to the judgment of Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union*, wherein the Court observed:

'The giving of reasons is one of the fundamentals of good administration'. In *Shri Swamiji v. Commissioner, H.R.C.E.* : [1980]1SCR368 , the Supreme Court noted with approval the legal maxim '*cessante ratione legis cessat ipsa lex*', which means reason is the soul of law and when reason of any particular law ceases, so does the law. In *State of West Bengal v. Atul Krishna Shaw and Anr.* reported in : AIR 1990 SC2205 , Supreme Court of India, reiterated that giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice. Judicial discipline to abide by declaration of law by this Court,

cannot be forsaken.

9. In the aforesaid view of the matter, the importance of reasoned order cannot be overlooked by any Court much less by the Income-tax Appellate Tribunal.

10. The basic rule of natural justice requires recording of reasons in support of the order. The order has to be self-explanatory and should not keep the higher court guessing for reasons. Reasons provide live link between conclusion and evidence that vital link is a safe guard against arbitrariness, passion and prejudice. Reason is a manifestation of mind of adjudicator. It is a tool for judging the validity of the order under challenge. It gives opportunity to the higher court to see whether or not the adjudicator has proceeded on the relevant consideration, material and evidence.

11. Having said so, the inordinate unexplained delay in pronouncement of the impugned judgment has also rendered it vulnerable.

12. The learned Counsel for the appellant has referred to various judgments of the Apex Court as well as of this Court and various other High Courts to show that only on the ground of delay in rendering the judgment for period ranging from four months to 10 months, judgments were held to be bad in law and set aside. It has been held time and again that justice should not only be done but should appear to have been done and that justice delayed is justice denied. Justice withheld is even worse than that. The Apex Court in the case of *Madhav Hayawadanrao Hoskot v. State of Maharashtra* : 1978 CriLJ1678 had an occasion to take serious note of the prejudice normally caused to the litigant due to delayed delivery or pronouncement of the judgment for the reasons which are not attributable either to the litigant or to the State or to the legal profession.

13. In *R.C. Shama v. Union of India* 1976 (3) SCC 474, the Apex Court after noticing absence of the provision in the Code of Civil Procedure in the matter of time frame in delivery of judgment, observed as under:

Nevertheless, we think that unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary

circumstances, is highly undesirable even where written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done.

14. Recently, the Apex Court in the case of Anil Rai v. State of Bihar has also reconsidered the serious issue of delayed delivery of judgment by some of the High Courts and laid down certain guide-lines in the matter of pronouncement of judgments by the High Courts.

15. In the case of Devang Rasiklal Vora v. Union of India : 2003ECR658(Bombay) , the Division Bench of this Court to which one of us is a party (Daga, J.) had an occasion to issue directions to the President of the Central Excise and Gold (Control) Appellate Tribunal, Mumbai to frame and lay down the guide-lines on the similar lines as were laid down by the Apex Court in the case of Anil Rai v. State of Bihar (supra) and to issue appropriate administrative directions to all the Benches of the said Tribunal. The similar guide-lines can conveniently be laid down for the courts, tribunals and quasi-judicial authorities prescribed under the Income Tax Act, 1960 ('Act' for short) so as to prevent delayed delivery of the judgment and/or order which at the end of the day results in denial of justice as happened in the instant case.

16. We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai v. State of Bihar (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the benches of the Tribunal.

In the meanwhile, all the revisional and appellate authorities under the Income Tax Act are directed to decide matters heard by them within a period of three months

from the date case is closed for judgment.

17. Now, turning to the merits of the challenge set up to the impugned order, prima facie, we are satisfied that some of the vital points raised in this appeal and canvassed before us are not to be found in the judgment of the Appellate Tribunal though, according to the learned Counsel for the Appellant and borne out from the appeal memo, they were canvassed before the Tribunal. Omission to make reference to the contentions canvassed can only be attributed to the delayed delivery of judgment. In the circumstances, without going into the merits or demerits of the impugned order, delay in delivery of judgment by itself is sufficient to set aside the impugned order passed by the Appellate Tribunal to the extent it is challenged by the Appellant.

18. In the result, appeal is allowed. The impugned order is set aside to the extent it is challenged.

The subject appeal, ITA No. 5686/M/2004 is restored to the file of the Appellate Tribunal with direction to rehear the said appeal filed at the instance of the present Appellant and decide the same afresh with a reasoned order dealing with all contentions raised and canvassed on its own merits. All the rival contentions are kept open. Appeal stands disposed of in terms of this order with no order as to costs.

19. The Prothonotary and Senior Master of this Court is directed to forward the copy of this order to the President of the Appellate Tribunal for information, record and action in accordance with the direction issued herein and for reporting compliance thereof within three months from the receipt of this order.