NATURAL JUSTICE AND FISCAL LAWS :A BRIEF CONSPECTUS

The decision in **INDU GOENKA vs.ASSESSMENT UNIT, INCOME TAX DEPARTMENT & Ors. MAT 306 of 2023+ IA NO.CAN 1 OF 2023 DATED16.03.2023** on which I wrote an article a few days back on this esteemed forum ,brings in focus the necessity of a cross sectional study of the concept ,why it is necessary for quasi judicial authorites like income tax to follow them and what could be the consequences of breach thereof.

I.PREFACE:

N .J. principles are embedded compulsions in decision making which may adversely affect the rights of individuals. Rules of natural justice are held by some commentators to be procedural in nature primarily because the principles of natural justice to date are not codified in India(but they are widely accepted) unlike in the United States wherein the expression 'natural justice' has already been guaranteed by the text of the Constitution.

II.THE CONCEPT:

The term 'natural justice' is an interplay of Roman Concept 'jus - naturale' (and 'Lex naturale')which means principle of natural & eternal law, equity and good conscience.

Natural justice includes Right to notice, Right to know evidence and Right to cross examine.

Earliest modern record I could find while going through writings of

commentators on the topic is what can be labelled as **HALE'S TENETS OF JUSTICE.** In 1676, Sir Mathew Hale, the then Chief Justice of King's Bench (1671-76), set out 18 tenets for dispensing of justice. The sixth tenet read as follows,

"That I suffer not myself to be possessed with any judgment at all till the whole business of both parties be heard."

There are two dimensions to this-one that a judge should not form a view on the merits of the matter before him until all the parties are heard.Second is that the party to an adjudication has a right to be heard This is the maxim of ***"audi alteram partem".***

III.THE ALL PERVASIVE IMPERATIVE:

In the famous ***Maneka Gandhi*** **case [(1978) 1 SCC 248],** Justice Bhagawati noted this to be, *"a great humanising principle"*, and went on to hold that procedural fairness is implied even in situations where the statute does not provide for it, [set out by Byles J. in ***Cooper v. Wandsworth Board of Works*** **[(1863) 143 ER 414**]. This is to be done even where a formalised hearing may have the effect of stultifying the exercise of the statutory power. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case.

In ***S.L. Kapoor v. Jagmohan & Ors.*** **[AIR 1981 SC 136(1)],** it was held that *"merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."*

Mohinder Singh Gill & Anr vs The Chief Election Commissioner 1978 AIR 851 held that *"The philosophy behind natural justice is participatory justice in the process of democratic rule of law. In the vital*

area of election where people's faith in the, democratic process is hypersensitive it is realism to keep alive audi alteram even in emergencies. Hearing need not be an elaborate ritual. In situations of quick despatch, it may be minimal, even formal. Fair hearing is a postulate of decision making, although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial.''

IV.QUASI JUDICIAL BODIES AND NATURAL JUSTICE

1.M.S.Gill(supra) ,a watershed decision famously held that '' *The dichotomy between administrative and quasi-judicial functions vis a vis the doctrine of natural justice is presumably obsolescent after Kraipak(note: para 6.2 below) which marks the water- shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems, and are not any 'new theology.* ***They are manifested in the twin principles of nemo judex in sua causa and audi alteram partem.*** *It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice. These rights can operate only in areas not covered by any law validly made; they do not supplant the law of the land but supplement it. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or body of per-sons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the*

*court has to decide whether the observation of that rule was necessary for a just decision on the facts of that case. Further, even if a power is given to a body without Specifying that rules of natural justice should be observed in exercising it, the nature of the power would call for its observance. [**300 F-G, 301 B-D, 303-D] Kraipak [1970] 1 SCR 457, In re: H.K. (an infant) [1967] 2 Q.B. 617 and Ridge v. Baldwin [1964] AC 40 may be referred to.***

2.Quasi-judicial bodies like IT authorities are non-judicial bodies which have the powers of interpreting and implementing the law.They have powers and procedures resembling those of a court of law or judge.Their legal obligation is to objectively determine facts and draw conclusion from them so as to provide the basis of an official action.

3.Non judicial functions take within its sweep –

- **Quasi-legislative acts**(law/rule making)
- **Quasi-judicial acts**(law/rule deciding)
- **Purely administrative acts**(law/rule applying)

From a broad perspective all the three above may be labelled administrative acts and **include Ministerial acts** as well.

3.1 .An administrative function is called **'quasi-judicial'** when there is an obligation to assume a judicial approach and to comply with the basic requirements of natural justice. Thus, the fundamental purpose of a quasi-judicial hearing is **to provide the affected parties due process.**

4.Income tax authorities have a partly judicial character by possession of the right to hold hearings on and conduct investigations

into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts.

5. Judicial decisions may create new laws, but quasi-judicial decisions are based on existing law. A **quasi-judicial power** refers to **the power vested in the bodies established by law, administrative officers, or bodies to determine the rights of those who appear before it** . A quasi-judicial power has been described as the power or duty to investigate and to draw conclusions from such investigations.

6.Hon'ble SC held in ***State of Orissa v. Dr. (Miss) Binapani Dei*** **1967 AIR 1269** that even if the order made was administrative in character it has to be in consonance with natural justice.

6.1 ***Siemens Engineering v. Union of India*** **1976 AIR 1785** was the first case to observe that, quasi-judicial authorities are required to pass the reasons for the order.

6.2 A. K. Kraipak & Ors. Etc vs Union Of India & Ors AIR 1970 SC A **was the watershed moment wherein a Constitution Bench established** connect between administrative ,quasi-judicial, judicial functions, on one hand and natural justice on the other.It also decided the less known principle of natural justice of *nemo judex in causa sua* holding that a person who serves on a committee that selects candidates for a job must not be a candidate for the job himself.

7.In **Uma Nath Pandey CRIMINAL APPEAL NO. 471 OF 2009 (Arising out of SLP (Crl.) No.6382 of 2007)** it was held in para 8 by hon'ble SC that'' *The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in*

issue".

V.CONSEQUENCES OF VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

A.Let us first see what judicial pronouncements have to say about this:

1.In **Ridge v. Baldwin [1964] AC 40** the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. Also refer **Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 AC 147.**

Breach of natural justice nullifies the order made in breach. If that is so, then the order made in violation of the principles of natural justice is of no value.

2.An act in violation of the principles of natural justice is void or of no value - **State of Orissa v. Dr. (Ms.) Binapani Dei [1967] 2 SCR 625.**

3.In **Dunlop India Ltd. v. Asstt. CST [1989] 175 ITR 622/[1990] 49 Taxman 288 (Ker.),** it has been held that breach of rules of natural justice is placed at par with total lack of jurisdiction.

4.The Kerala High Court in **Ponkunnam Traders v. Addl. ITO [1972] 83 ITR 508, Addl. ITO v. Ponkunnam Traders [1976] 102 ITR 366 (Ker.)** has held that failure to conform to the principles of natural justice would make a judicial or quasi-judicial order void, and **such an order cannot be validated by the appellate or revisional orders.**

It is like orders at s.no 4 that the cry for**''complete justice''**(spirit of ARTICLE 142 of the Constitution-though power vests exclusively with hon'ble SC)necessitates a set aside for re determination because non

codified principles of natural justice arguably procedural in nature,cannot deprive the State of its just desserts.

But we have the contra views as well where 'why second innings' argument prevails.Readers may refer fruitfully to **KSS Petron Private Ltd. v/s.ACIT INCOME TAX APPEAL NO. 224 OF 2014(Bom)as well as to Indu Goenka(supra).**

In KSS ,it was held that *''8.We note that once the impugned order finds the **Assessment Order is without** jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, **then there is no reason to restore the issue to the Assessing Officer t** o pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet **the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters**.''*

A similar view prevails in **H.R. Mehta *v.* ACIT [2016] 387 ITR 561 (Bombay)**

In contrast we have a decision like **Sugar Developers, reported in (2016) 72 taxmann.com 321(Guj) which holds that '' *the decision-making process should be placed at a stage where defect is detected*** *rather than to permanently annul action of the authority.''*

B.My comment:

This is tricky territory specially in fiscal laws.If the violation has caused material prejudice then the minimum consequence is that the matter reverts to the point where breach occurred,eg.if the AO did not give a speaking order or effective hearing was not provided; the matter reverts to AO.

But the contra view is why the revenue should be given a second chance and assessee made to suffer the consequences of his ineptitude in terms of litigation costs and valuable time?However for the latter to prevail,a decision on merit shall have to be given and sifting of evidence including additional evidence will be needed as a first court of adjudication i..e.say like ITAT deciding like AO.

Alternatively ,as the unforgiving theorists argue ,the adjudication or determination deserves to be annulled or quashed with no recourse to revenue except perhaps to go in further appeal.The term ''set aside''in civil law generally has a different meaning than in fiscal law(which too is civil law).I am often amused to see a final finding which says that ' *'as a result the proceedings are quashed and the matter is hereby sent back/set aside to AO for a fresh determination of income''*.How can **quash** and **set aside** operate on the same dimension?

Quashed/Annulled/null and void/void are terms of final determination.Maybe my modest capabilities do not let me see what the adjudicating authorities mean ,but to my mind a set aside(often termed''remanded''in general civil law)is a denovo proceeding on the same subject matter on the parameters set by the remanding authority(in income tax a 'remand'means that the matter remains with the authority with whom it is and some issues are sent back for enquiry/verification culminating into a report to aid the adjudicating authority e.g.250(4)of IT ACT 1961).In criminal law the term remand is

of a totally different meaning[see s 167(2) and 167(2A) ofCrPC]In civil law Order 41 Rule 23 read with s 107 of CPC covers the issue.

VI.CONCLUSION

Hence principles of natural justice shall be presumed necessary and have to be applied like a categorical imperative unless and until there is a clear legislative interdict to the contrary. As for the consequences of breach thereof we have to rely on Court's sense of wisdom.The last word on this shall remain as a fascinating duality in law.

Anadi varma