

**[1998] 97 Taxman 358 (SC)/[1998] 229 ITR 383 (SC)/[1999] 157 CTR 249 (SC)[04-12-1996]**

**[1998] 97 Taxman 358 (SC)**  
**SUPREME COURT OF INDIA**  
**National Thermal Power Co. Ltd.**

**v.**

**Commissioner of Income-tax\***

A.M. AHMADI, C.J.  
 I.K. RAMASWAMY AND MRS. SUJATA V. MANOHAR, JJ.  
 TAX REFERENCE CASE NO. 4 OF 1988  
 DECEMBER 4, 1996

**Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment year 1978-79 - Tribunal declined to entertain additional ground raised for first time by assessee that interest earned before setting up of business by keeping surplus funds in short-term deposits was erroneously included in its total income - Whether Tribunal has jurisdiction to examine a question of law which arises from facts as found by authorities below and having bearing on tax liability of assessee even though such question was not raised before authorities below nor in grounds of appeal but raised by way of additional issue in a forwarding letter - Held, yes [case remanded back to Tribunal for consideration of new grounds on merits]**

## **FACTS**

During the assessment year 1978-79, the assessee kept surplus funds not immediately required in short-term deposits and earned interest. The interest, thus, earned was offered for tax and the assessment was completed accordingly. The assessee learnt subsequently, from the decision of the Tribunal in the case of *Anasan Aluminium Industries (P.) Ltd. & Nagarjuna Steels Ltd.* that the interest earned in this manner before the setting up of business was not taxable as income and it went to reduce the capital cost of the plant. The assessee raised this as an additional point before the Tribunal not in grounds of appeal but in a forwarding letter, for the first time, contending that the interest earned was erroneously included in the total income. But the Tribunal declined to entertain the additional grounds.

On reference to Supreme Court :

## **HELD**

*Under section 254, the Tribunal may after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

*In the case of Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688, the Court, while dealing with the powers of the AAC observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO. The Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The AAC must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The AAC should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.*

*The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*

*The Tribunal has, therefore, jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.*

*Proceedings remanded back to the Tribunal for consideration of the new grounds raised by the assessee on the merits.*

## **CASE REVIEW**

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*CIT v. Anand Prasad [1981] 128 ITR 388/ 5 Taxman 308 (Delhi), CIT v. Karamchand Premchand (P.) Ltd. [1969] 74 ITR 254 (Guj.) and CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499/[1984] 19 Taxman 278 (Guj.) (FB) impliedly approved.*

## **CASES REFERRED TO**

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*Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688 (SC), CIT v. Anand Prasad [1981] 128 ITR 388/ 5 Taxman 308 (Delhi), CIT v. Karamchand Premchand (P.) Ltd. [1969] 74 ITR 254 (Guj.) and CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499 / [1984] 19 Taxman 278 (Guj.) (FB).*

**K.P. Bhatnagar, S. Rajappa, S.R. Gera and R.C. Misra for the Applicant. Dr. R.R. Misra, Ms. Lakshmi Iyengar and V.K. Verma for the Respondent.**

## **JUDGMENT**

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1. The assessee carries on the business, *inter alia*, of construction, generation, operation and maintenance of thermal power stations and associated transmission network.

2. During the assessment year 1978-79, the assessee had deposited its funds which were not immediately required, on short-term deposits with banks. Interest received on such deposits during the previous year relevant to the assessment year 1978-79 amounted to Rs. 22,84,994. This was offered by the assessee for tax assessment and the assessment was completed on that basis. Before the Commissioner (Appeals), a number of grounds were taken by the assessee challenging the assessment. However, the inclusion of this amount of Rs. 22,84,994 was neither challenged by the assessee nor considered by the Commissioner (Appeals). From the order of the Commissioner (Appeals), the assessee filed an appeal before the Tribunal. The inclusion of the said amount of Rs. 22,84,994 was not objected to even in the grounds of appeal as originally filed before the Tribunal. However, by a forwarding letter dated 16-7-1983, the following additional grounds were sought to be raised by the assessee :

1. The sum of Rs. 22,84,994 deducted from 'Statement of expenditure during construction' cannot be included in the total income.

2. It is contended that on admission (erroneous), no income (the sum of Rs. 22,84,994) can be included in the total income.
3. The authorities below have erred and failed in their duty in not adjudicating the facts and evidence on record and mechanically including Rs. 22,84,994 in the total income.

3. The assessee contended that on account of two orders of Special Benches of the Tribunal in the cases of *Arasan Aluminium Industries (P.) Ltd. & Nagarjuna Steels Ltd.*, the assessee learnt that the interest earned in this manner before the setting up of business is not taxable as income and it goes to reduce the capital cost of the plant. On learning about this legal position, the assessee sought to include the above three grounds in its grounds of appeal. The Tribunal has declined to entertain these additional grounds.

4. The Tribunal has framed as many as five questions while making a reference to us. Since the Tribunal has not examined the additional grounds raised by the assessee on the merits, we do not propose to answer the questions relating to the merits of those contentions. We reframe the question which arises for our consideration in order to bring out the point which requires determination more clearly. It is as follows :

"Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same ?"

5. Under section 254 of the Income-tax Act, 1961, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of *Jute Corpn. of India Ltd. v. CIT* [1991] 187 ITR 688, this Court, while dealing with the powers of the AAC, observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The AAC must be satisfied that the ground raised was *bona fide* and that the same could not have been raised earlier for good reasons. The AAC should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal - *vide, e.g., CIT v. Anand Prasad* [1981] 128 ITR 388/ 5 Taxman 308 (Delhi), *CIT v. Karamchand Premchand (P.) Ltd.* [1969] 74 ITR 254 (Guj.) and *CIT v. Cellulose Products of India Ltd.* [1985] 151 ITR 499/[1984] 19 Taxman 278 (Guj.) (FB). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, *i.e.*, the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.

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\*Matter remanded.