

**(2009) 10 P&H CK 0052**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

The Commissioner of Income  
Tax-I

APPELLANT

Vs

Arora Alloys Ltd.

RESPONDENT

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**Date of Decision:** Oct. 23, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 153, 260A

**Hon'ble Judges:** Gurdev Singh, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The revenue has preferred this appeal u/s 260-A of the Income Tax Act, 1961 (for short, "the Act") against order dated 11.07.2008 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh in I.T.A. No. 319/ Chandi/2008 for the assessment year 2004-05, proposing to raise following substantial question of law:

Whether on the facts and law the Hon'ble Tribunal was justified in setting aside the order of AO with direction to frame fresh assessment on the basis of decision of Excise Tribunal in regard to appeal filed by the Customs and Excise Department ignoring the fact that proceedings before Excise Tribunal are not barred by limitation whereas fresh assessment as directed by ITAT will be barred by limitation on 31.12.2009 as per Section 153 of the Income Tax Act, 1961.

2. The Assessing Officer initiated proceedings for reassessment and made certain additions to the declared income of the assessee. Basis for re-assessment was proceedings under the Central Excise Act showing clandestine removal of stocks, outside the books of account. The CIT(A) deleted the said additions, taking into account finding of higher authority in proceedings under the Central Excise Act. On further appeal, the Tribunal directed framing of fresh assessment keeping in view

judgment of this Court in [Commissioner of Income Tax Vs. K.S. Bhatia,](#) after the Excise Tribunal decided the appeal of the department.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the revenue submits that the judgment of this Court in K.S. Bhatia (supra), relied upon by the Tribunal was not applicable, as in that case the finding which was relied upon, as information for re-assessment, had been set aside by the higher authority. The assessing authority could not be required to wait till decision of the Excise Tribunal, by which time proceedings may become time barred. Proceedings under the Central Excise Act had relevance only for formation of opinion of escapement of income and thereafter, the authorities had to independently finalise re-assessment irrespective of final view in excise proceedings. Learned Counsel for the assessee is not able to rebut the submission and in a way supports the view that matter should have been finalised on merits. Question of law is answered accordingly by holding that the Tribunal was not justified in directing that the matter be kept pending till the decision of the Tribunal.

5. Accordingly, this appeal is allowed, impugned order of the Tribunal is set aside and the matter is remanded to the Tribunal for fresh decision on merits in accordance with law.

6. Parties may appear before the Tribunal for further proceedings on 14.1.2010.