

**(1991) 189 ITR 169**

**Allahabad High Court**

**Case No:** Income-tax Reference No. 1093 of 1978

Commissioner of  
Income Tax

APPELLANT

Vs

Ram Nath Ram Prasad

RESPONDENT

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**Date of Decision:** Dec. 4, 1990

**Acts Referred:**

Excess Profits Tax Act, 1940 & Section 13(1) Income Tax Act, 1961 & Section 155(3)

**Citation:** (1991) 189 ITR 169

**Hon'ble Judges:** B.P. Jeevan Reddy, C.J; V.N. Mehrotra, J

**Bench:** Division Bench

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### **Judgement**

B.P. Jeevan Reddy, C.J.

The Income Tax Appellate Tribunal has stated the following question u/s 256(1) of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the provisions of Section 155(3) of

the Income Tax Act, 1961, were not applicable to the facts of this case and hence the Income Tax Officer was not competent to rectify the

assessments under that section by withdrawing the deduction of excess profits tax liability allowed earlier even when the excess profits tax

proceedings were quashed by the court ?

2. The assessee is an Hindu undivided family. The Income Tax assessments of the assessee for assessment years 1944-45 to 1947-48 were

completed in March, 1953. The excess profits tax payable by the assessee for each of these years was allowed as a deduction while computing

the total income of the respective years. Subsequently, notices were issued u/s 13(1) of the Excess Profits Tax Act, 1940, to the assessee with

respect to the said four assessment years, the validity whereof was questioned by the assessee on the ground that the Hindu undivided family

having got disrupted on October 1, 1951, proceedings for assessment of the excess profit tax cannot be initiated against it. The said contention

was upheld by this court and an appeal preferred by the Department to the Supreme Court was dismissed on August 28, 1972 The Income Tax

Officer, Gorakhpur Vs. Shri Ram Prasad and Others, . After the decision of the Supreme Court, the assessee called upon the Department to

refund the amount paid by it on account of excess profits tax during the said years. It is then that the Income Tax Officer initiated proceedings for

rectifying the Income Tax assessment orders for the said years u/s 154 read with Section 155(3). The assessee objected to the rectification, but its

objections were overruled and the assessment orders were revised, withdrawing the deduction granted on account of the excess profits tax. An

appeal to the Appellate Assistant Commissioner was dismissed. The matter was then carried by the assessee to the Tribunal. The Tribunal held

that, on its language, Sub-section (3) of Section 155 is not attracted and is not applicable to the facts of the case and, therefore, the orders of

rectification are bad. The Revenue thereupon applied for and obtained this reference.

3. Section 155(3) reads as follows :

Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or

where any excess profits tax has been assessed after the completion of the corresponding assessment for Income Tax and in consequence thereof,

it is necessary to amend the total income of the assessee chargeable to Income Tax, the Assessing Officer may make the necessary amendment

and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in Sub-section (7) of that section being

reckoned from the date of the order making or modifying the assessment of such excess profits tax or business profits tax, as the case may be.

Explanation.--For the purposes of this sub-section, where the assessee is a firm the provisions of Sub-section (1) shall also apply as they apply to the amendment of the assessment of the partners of the firm.

4. A reading of Section 155(3) shows that it provides for passing of consequential orders in two situations :

(i) Where the excess profits tax or business profits tax payable by an assessee which has been given deduction in the assessment of Income Tax is

modified in appeal, revision or other proceeding :

or

(ii) where any excess profits tax has been assessed after the completion of the corresponding assessment for Income Tax.

5. In either of these situations, if it is found necessary to amend the total income of the assessee chargeable to Income Tax, the Income Tax Officer

may make the necessary amendments. For this purpose, Section 154 is made applicable and the period of limitation of four years mentioned in

Section 154(7) shall be reckoned from the date of the order making or modifying the assessment of the excess profits tax or business profits tax,

as the case may be.

6. Now, coming to the reasoning of the Tribunal, it runs thus :

In the present case, there has been no order revising the excess profits tax payable by the assessee. The proceedings before the Supreme Court

were not for determining the amount of excess profits tax payable by the assessee. The assessee merely challenged the notices issued u/s 13(1) of

the Excess Profits Tax Act. The said notices were quashed by the High Court in Income Tax OFFICER, GORAKHPUR Vs. RAM PRASAD

AND OTHERS., and the order of the High Court was affirmed by the Supreme Court. The Income Tax Officer, Gorakhpur Vs. Shri Ram Prasad

and Others, . That did not take away the liability of the assessee. Its liability to pay the excess profits tax was never in dispute. Merely because

notices issued for assessment to the excess profits tax were quashed, it does not affect the assessee's liability to pay the excess profits tax. In such

a situation, Section 155(3) does not apply.

7. We find ourselves unable to agree with this reasoning. Evidently, the Tribunal has missed the crucial expression occurring in Section 155(3) ; in

the first clause of Sub-section (3), the expression used is ""payable"", and not ""liable"". Liability to tax and its payability are two different things., For

example, liability to Income Tax is created by Sections 3 and 4 of the Income Tax Act read with the relevant section of the annual Finance Act, but

the tax becomes payable, ordinarily speaking, only when an assessment is made and the amount of tax payable is determined. One of the situations

contemplated by Sub-section (3) of Section 155 is where a deduction has been allowed in the Income Tax proceedings of an assessee on account

of the excess profits tax or business profits tax payable by such assessee and in appeal, revision or other proceeding, the order regarding the

payability of the excess profits tax or business profits tax is modified, consequential orders can be made in the Income Tax assessment u/s 154

read with this sub-section. Similarly, it provides that where, after the Income Tax assessment is completed, excess profits tax is assessed and thus

becomes payable, the Income Tax assessment can be rectified so as to allow deduction on that account. The Tribunal was in error in treating the

word ""payable"" as synonymous with the word ""liable"". May be the liability to pay excess profits tax under the Excess Profits Tax Act may not have

ceased, but the fact remains that it had claimed deduction on that account and now, as the said tax has become not payable because the notices u/s

13(1) of the Excess Profits Tax Act have been quashed, the assessee is entitled to the refund of excess profits tax. It claimed it and presumably got

it.

8. Learned counsel for the assessee argued that, since the liability to excess profits tax has not ceased, Sub-section (3) of Section 155 has no

application. This is precisely the reasoning given by the Tribunal with which we cannot agree.

9. The other argument urged by learned counsel for the assessee is that Sub-section (3) of Section 155 applies only where the excess profits tax is

modified"" in appeal, revision or other proceeding. Learned counsel emphasised upon the meaning of the word ""modified"" and said that this

expression does not mean total withdrawal or revocation or cancellation of the tax, but only variation. In this behalf, the dictionary meaning of the

word ""modify"" was relied upon by him as also the observations of the Supreme Court in paragraph 23 of its judgment in Burrakur Coal Co., Ltd.

Vs. The Union of India (UOI) and Others, . We are, however, of the opinion that the expression ""modified"" must be understood in the context in

which it occurs. As is often said, a word takes its colour from the context. If the construction suggested by learned counsel is accepted, the said

sub-section would be applicable where the tax is reduced, say from Rs. 1,000 to Re. 1 but not where it is totally held not payable. The discussion

in the judgment of the Supreme Court about the word ""modification"" was in a different context and cannot be applied here. Indeed, the

observations of the Supreme Court in an earlier decision in Atma Ram Vs. The State of Punjab and Others, , quoted in paragraph 23 of the said

judgment itself go to show that the meaning of the expression ""modification"" varies from context to context.

10. It was then argued by learned counsel for the assessee that a writ proceeding is not ""any other proceeding"" within the meaning of Section

155(3). We are unable to accept this submission as well. The expression is ""any other proceeding"" and there is no reason why a writ proceeding is

not to be included within the said phrase. In fact, if a writ proceeding is not included within the said phrase, it would become superfluous and a

surplus age.

11. Learned counsel for the assessee invoked the principle that, in a taxing statute, words must be strictly construed and that there is no room for

any equity in a taxing statute. That is so. But what we are concerned with herein is to give a reasonable interpretation of Sub-section (3) of Section

155 of the Income Tax Act having regard to its underlying object and the language employed therein. It must be remembered that the said sub

section provides for both the situations, namely, where a deduction has been granted but it has to be modified and where a deduction has not been

claimed and granted but has to be allowed.

12. For the above reasons, we answer the question referred in the negative, that is, in favour of the Revenue and against the assessee. No costs.